CASE AND COMMENT

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David Josiah Brewer

An Ideal American

BY THE EDITOR

HE died as strong men and brave men would wish to die,—in the full use of his superb faculties, mental and physical. He served to the end, and went down like a great oak that is shattered by a bolt from the sky. He was fortunate both in his life and in his death.

David J. Brewer was born in Smyrna, Asia Minor, June 20th, 1837. His mother was a sister of two eminent jurists—Justice Stephen J. Field and David Dudley Field—and of Cyrus W. Field, through whose untiring efforts the first Atlantic cables were laid. She married Rev. Josiah Brewer, a graduate of Yale, and accompanied him when he went to Turkey in Asia, as one of the first missionaries of the American Board. Justice Brewer inherited richly not only from his mother, but from his father,—the priceless heritage of a vigorous body, genial disposition, and splendid mind. The romance of missions was for him incarnate in the persons of his own parents, and it never lost its hold upon him. For many years, up to the day of his death, he was Vice President of the American Missionary Association, the organization of the Congregational Church—of which he was a communicant—for work among negroes, Indians, and the neglected whites of the Appalachians.

Justice Brewer studied for a time at Wesleyan University, Middletown, Connecticut, and later went to Yale, where he graduated in 1856 as a classmate of Senator Chauncey M. Depew and Justice Henry B. Brown. He read law with his uncle David Dudley Field, and thereafter entered the Albany Law School, from which he graduated in 1858.

The great West allured him, and he threw in his fortunes with those of Leavenworth, Kansas. He had received his scholastic training at the hands of the East, but his training in affairs came from the new West. We cannot overestimate the influence which this mid region of the midland rivers and the boundless prairies had upon him. In that land of far distances men grow broad, free, and untrammeled. As his eyes roamed the broad, sunny ways of nature, his mind sought the liberal, sunny regions of thought. It was this gift of the magical West that preserved to him in the wintertide of his days a youthful interest and sympathy in the forward movements of the time. Although an old man, he lived forever in the present, and looked forever toward the dawn.

In 1862 he was nominated for the office of judge of the probate and criminal courts of Leavenworth county. He had desired to be named for the legislature, and accepted the judicial position under protest. With his election he began an

almost continuous period of judicial service, covering forty-seven years. In denying his legislative aspirations, fate chose kindly for him.

In 1865 he was appointed a United States district judge. In 1869 he became county attorney, and from 1870 to 1884 was a justice of the supreme court of the state of Kansas. He was appointed a judge of the circuit court of the United States in 1884, and in 1889 President Harrison appointed him an associate justice of the United States Supreme Court, to succeed Justice Stanley Matthews, of Ohio.

Justice Brewer's death is especially untimely, for it removes one of the members of the court at a time when the tribunal is about to pass on some of the most important cases in the country's history. These are the Standard Oil, Tobacco, and Corporation Tax Cases. What effect his demise will have on this litigation can hardly be even conjectured.

¶ Publicity has a tendency to prevent schemes and questionable transactions in corporate life.

¶ Publicity is not a new force in our national life, but its power is greater today than in the past.

¶ Publicity helps to form public opinion as the mighty force of the age.

—David J. Brewer.

In his judicial decisions Justice Brewer was inspired by a large Americanism. He aimed at giving the law its fullest power in line with the obvious intent of its framers, as limited by the restrictions of the Federal Constitution. He was old-fashioned enough to stand by the Constitution when impatient statesmanship treated it with ill-concealed contempt.

Justice Brewer deemed it his duty to combat with tongue and pen the idea that the meaning of the Federal Constitution could be changed by judicial construction. He insisted that the principles of the Constitution were always the same, that while these principles were constantly applied to new and changing conditions they did not themselves change in any respect. He believed there was serious danger that the executive and judicial branches of government would weaken the power of the legislative branch, and thus cripple representative government.

He fought the tendency to weaken the powers of the states composing the nation by widening and otherwise increasing the powers of the Federal government. He condemned the growing habit of appealing to the central power at Washington for relief from ills which the community especially affected had authority to correct for itself. In these important particulars he wielded a marked influence against undue centralization.

He was a student and thinker, and yet a man of activity. He was no closet philosopher, working out theories in the privacy of his study, but an associate of men, examining conditions at close range, and gaining his facts at first hand. The consequence was that his public utterances and his judicial opinions were illumined by an unusual breadth of knowledge and sympathy with human conditions.

In one of his public addresses Justice Brewer quoted Lord Mansfield's saying that he wished popularity, not the popularity that is run after, but that which sooner or later "never fails to do justice to the pursuit of noble ends by noble minds." It was this popularity that Justice Brewer coveted, and he won it by the frankness, courage, and liberality of his opinions, uttered as a citizen on every occasion suitable for their expression. He would not allow himself to be restricted by the conventional dignity of judicial place, maintaining that the ermine should not cover him as with a cloak of silence. He remained a citizen, with the citizen's right to think for himself and the impulse to speak his thoughts, although he sat on the bench of the Supreme Court. He was aware that he did not escape criticism when he discussed public questions, impending laws, and even the national administration, but he thought that his life tenure on the bench should furnish the answer to those who thought that he was not actuated by an ideal of

duty to his countrymen and his generation. He opposed the annexation of the Philippines, and later urged their independence and neutralization. He desired to see immigration restricted, because he feared submersion of the "Anglo-Saxon" stock. He scouted the idea of an invasion of the United States by a formidable force, and believed that a nucleus of an army, susceptible of rapid expansion, would be sufficient for the national defense. He advocated woman suffrage. Paternal government he condemned. Of the income tax he said: "If once you give the power to the nation to tax all the incomes, you give the power to tax the states, not out of their existence, but out of their vitality."

The Federal judiciary, he held, "must continue to be the bulwark of our liberties, if they are not to perish." There was no other power "to save the country from the consequences of legislative wandering beyond constitutional limits."

> ¶ I believe that an all-wise Providence had a hand in the rise of this great country to a world power that is able to dictate peace instead of war throughout the world. America is in a position to promote the brotherhood of man, and the most powerful influences of public opinion are tending in that direction.
>
> —David J. Brewer.

Of recent years there has been no more virile, instructive speaker on affairs of moment than Justice Brewer. His public addresses have been exceptional for the matter and the manner, and have always promptly challenged attention by the vigor of the views advanced. He was an orator of unusual ability. With a picturesque person, a rich rotund voice, and a command of strong and powerful English, he always held his audiences until the last word of his oratory had died away.

Justice Brewer's habits were Spartan. It was his practice for many years to rise at four o'clock in the morning to attack his work. Even after he became a Supreme Court justice he still continued to rise at five.

One likes to remember that, with democratic tastes, he shied a little at the black judicial gown. One likes to recall that only a short time ago he sat with his colleagues on the bench, in session of the august tribunal of the Supreme Court of the United States, with his little granddaughter, a welcome visitor, on his knee.

The genial nature of the man is illustrated by an incident which occurred in the old Copeland hotel, at Topeka. "I arrived in Topeka," said Justice Brewer, in telling the story, "and went to the Copeland. As I entered the office I passed the cigar stand, and noticed several pictures of myself on cigarbox lids, and above them the words 'Our Judge.' After I registered, the clerk called a small boy, very black, to carry my satchel to my room, and I accompanied him. He looked me over from head to foot, and, before we had walked very far, stopped and addressed me:

"'Ain't you de man what manufactuahs dem dere "Ouah Jedge" cigahs?' he asked, as his big eyes sparkled.

"'Yes, I'm the man,' I said, but I could not keep from laughing. It was too good a joke."

After he married the present Mrs. Brewer they went on a visit to his old home in Kansas.

In Washington a justice of the Supreme Court is always spoken of as "Mr. Justice," and that was the title Mrs. Brewer had always heard. When they reached Chicago the "Mr." was dropped, and the jurist was referred to as Justice Brewer. At Omaha some old friends called him "David J.," and when they crossed the Kansas line some former neighbors referred to him as "Dave."

"Let's go home," suggested Mrs. Brewer.

"Why?" asked the justice.

"Because, dear," Mrs. Brewer replied, "I am afraid if we go any farther they will be calling you Davie."

It is not surprising that it was the oft-expressed wish of the jurist that his body should be laid at rest at Leavenworth, "the scene of his early triumphs,"—and among those who knew him best and who loved him as he loved them.

Old Age Pensions

BY BURDETT A. RICH

A world-wide movement is going on to better the conditions of living for aged people who cannot support themselves. The United States, which has led many advances in civilization, is, in this matter of providing for the aged poor, less progressive than New Zealand, Australia, Canada, or the leading nations of Europe. Germany, Denmark, Belgium, Italy, France, Austria, and England, as well as the British states just named, have all enacted laws of some kind on this subject. Real interest in the question has just commenced in this country, being stimulated by the reports from abroad and by the belief that what so many nations have adopted must deserve intelligent study. For this purpose a bill was introduced last year by Congressman Lundin, of Illinois, in the House of Representatives, and the legislature of Illinois asked all the congressmen from that state to support it, for the appointment of a committee of investigation. This year, Representative Coudrey, of Missouri, has introduced an old age pension bill, which seems to be based on the English law. In 1907 a commission on old age pensions was appointed in Massachusetts, and has recently made an exhaustive report. The press states that this report strongly disapproves of the English law, which gives old age pensions to people who have not contributed to the fund for it, but favors contributory retiring pensions for public employees, and similar schemes for the aged workmen of large employers of labor. These conclusions are taken from the public press, however, and not from an examination of the report. These legislative investigations and proposed enactments, with the difference of views presented thereby, are sufficient to show that the subject is becoming a live one in the United States.

Three distinct classes of old age pensions can be broadly outlined, with reference to the classes of people to be pensioned by them. One, and the most important and comprehensive, class consists of government pensions for the aged poor in general, without limiting them to government employees. A second class consists of government pensions to public employees after a specified period of service to the government or some division thereof. The third class consists of pensions by business corporations or other private employers to their own employees. The last of these is the only class of pensions that has yet made great progress in this country. A system of such pensions has been quite commonly adopted by great railroad corporations, and has extended to some other large business enterprises. Government pensions in this country have had little development outside of the range of the military and naval service. The pensions of that class have been chiefly for disabilities resulting from the service, rather than from old age. Pensions to judges after a certain age have been familiar to the American people for a considerable time, and pension funds for firemen and police have also been somewhat common. But any comprehensive or considerable system of pensioning public servants has not yet been adopted or even seriously considered in the United States. Some beginnings of a system to pension school teachers also have been made, but so far they have been chiefly, if not altogether, on the general plan of creating a fund by contributions from the teachers themselves. The substance of the matter is that there has been just enough done in this country with respect to public servants,—as in the cases of judges,—to constitute a recognition of the underlying principle that the state may have some obligation toward those who have grown

old in its service. But a system of pensioning our aged poor as such, not based on the fact of their employment by the state, has hardly been heard of yet by the American people at large. Some advocates of this class of pensions rhetorically urge the equal merit of those who serve the state by working in the various forms of private industry, and those who serve it as soldiers in time of war. But the relation of the government to its own employees is not the same as its relation to the citizens who engage in their own affairs or work for private employers. The duty of the government to pay pensions for killed or disabled soldiers arises in part at least out of the inadequacy of their wages to pay for life, limb, or health lost in the service. The pensioning of judges or other public servants on the civil list may also rest in part on the inadequacy of their compensation. But in both classes of pensions there is also a purpose of public policy to secure the highest efficiency of service by taking away from those who serve the government all unnecessary anxiety about their means of livelihood when disabled. Old age pensions by the government rest on a different basis. They cannot rest on any relation of service to the state, as those who receive them will be, as a class, those who have served the state least. They must rest on the same principle that underlies all our poor laws. They must be in fact only a modification or change in form of the laws which have for centuries declared the obligation of the state to support those who could not support themselves.

Support in almshouses is now the usual method of caring for those who are entirely dependent upon the public for support. Out-of-door relief, that is, assistance outside of almshouses, is sometimes furnished to those who are only partially able to support themselves. Pensions may either be given for partial support, as a form of out-of-door relief, or they may be made in the maximum large enough for the entire support of those who have no other resources whatever. The English law gives a maximum weekly pension of 5 shillings, or about $1.25. This, of course, is inadequate for the entire support of a person, and leaves those who are entirely destitute of any other income to the necessity of being supported in almshouses. In Germany the maximum pension is only about $1.10 per week. In France a bill now under consideration proposes a maximum pension of about $1.55 per week. But in New Zealand and Australia the maximum pension is $2.50 per week. Even in those states it seems doubtful if the pension would be adequate for a person's entire support, though in some places conditions of living might make it possible. The Coudrey bill introduced at Washington this year, proposes to give a pension to persons whose income is less than $153 per year, of an amount not exceeding $1.22 per week, and which is to decrease according to the amount of other income, so that the aggregate of both shall not exceed $153.29 per year. Pensions of this character are obviously to be looked at in the light of a system of out-of-door relief for supplementing the inadequate incomes of those who can partly support themselves. The first and greatest change from the present system that would result would be the substitution of a fixed sum, by the law itself, which a needy person who had reached a specified age should be entitled to receive, instead of leaving that to be determined by the discretion of the local superintendents of the poor, or other officers with similar duties. Probably it would result in giving pensions to great numbers of people who now receive no public relief whatever, and to many others who are aided by charitable organizations, but get nothing from the public treasury. That, of course, is an objection if the present system is actually giving proper relief to all who ought to have it. But it is no objection unless the pension system would give them more than justice and humanity require. If both systems would do substantially the same work, then it is merely a question which would have greater advantages in administration,—as, for instance, in the comprehensiveness, certainty, and economy of its operation. If the pensions be made large enough to furnish complete support to persons with no other income, they can be made a more complete substitute for support in almshouses or other

public institutions. But such institutional relief could not in any case be entirely avoided, because there would be many homeless, helpless, and friendless poor persons of a class that could not easily find a refuge outside of public institutions.

Some objections to the old age pension system are obvious, and have already had practical demonstration in other countries. A pension to supplement an income less than a certain sum, and decreasing as the other income increases, takes away the inducement to earn anything more than enough to permit the maximum pension. For instance, in England the maximum pension is 5 shillings, and is given to one who earns not to exceed 8 shillings, making a total amount of 13 shillings for support. But the pension decreases as the earnings above 8 shillings increase, so that the maximum means of support is never more than 13 shillings. Therefore, one who can reasonably earn 12 shillings, and whose pension would then be one shilling, may prefer to earn only 8 shillings, and take a 5-shilling pension, which gives him the same amount of total income. Of course, the law will undertake to prevent this kind of graft, but it would not be able to do so altogether. Another result in England has been that some employers of pensioners who were getting less than the maximum pension have cut down their wages, so that the pensions were correspondingly increased. Thus, a pensioner earning 12 shillings, and getting a pension of 1 shilling, might have his wages cut down to any amount not less than 8 shillings, and the pension would be correspondingly increased, so that the public in reality would pay part of the pensioner's wages. It seems difficult, if not impossible, to prevent this being done. People who are in reality able to work and support themselves, but pretend that they cannot, would presumably be more numerous under the pension system than they are at present. Those who would rather work than go to the almshouse may not prefer work to a pension. All who have had experience in charitable work have met persons of this class. The skill which is needed to distinguish between the worthy and the unworthy in giving charity is needed still more in administering poor relief, and would be needed most of all in administering an old age pension law, with its greatly increased demands upon the public treasury. A tender consideration for the needy is demanded quite as much from the public official who distributes poor relief as it is from charity workers. but there is no less need of all shrewdness and thoroughness to defeat the attempted graft of those who can work, but prefer to be fed at public expense.

To the great majority of our people the suggestion of an old age pension law is something of a surprise. Probably most of them think of it as an impractical, if not an absurd, proposition. Many of them think of it as a dangerous step toward socialism. But, in the light of what other nations have done and are doing in this direction, the proposition is at least worthy of enlightened consideration. Reasonable people cannot declare for it or against it arbitrarily, but will wish to learn what wisdom can be learned from the experience of other countries. One thing seems certain,—that every civilized nation is beginning to recognize more fully its obligation to take decent and proper care of the helpless and the aged poor who cannot care for themselves. The United States has been less guilty of neglecting this obligation in the past than any other nation, and its burden in this matter is much smaller than that of the densely populated and less wealthy nations of Europe. It will be our shame if we do not keep the first place among nations in this matter of humanity to the needy. Whether this must be done by a pension law, or otherwise, is a matter for intelligent study.

Extent of Public Trust in Land Under Navigable Water

BY HENRY P. FARNHAM

THE states "hold the title to the beds of all waters within their respective borders that are navigable in fact," "in trust for all the people of the states respectively, for the uses afforded by the waters as allowed by the express or implied provisions of law." The above language is found in a recent opinion of one of our courts of last resort; and in another opinion, a similar court states that reasoning appeals to it, to the effect that the title to lands under navigable waters "by operation of law vests in the state to preserve to the people of the state forever a common right of fishing and navigation, and such other rights as are incident to public waters at common law, which trusteeship is inviolable, the state being powerless to change the situation by in any way abdicating its trust." What is the basis of this trust, and by what principles is it supported? If it is founded on a true common-law principle, it may safely be applied in all its beneficence, but if it is founded merely on some theory of general welfare or public policy, the old conflict between the departments of government at once arises, and the attempt by the court to enforce it involves an exercise of power which, however beneficent the result, may be of doubtful expedience. Any arbitrary control exercised by the court over the legislature in excess of its constitutional power destroys the constitutional balance of governmental powers, the consequences of which may be more disastrous than the mere closing or destroying of a body of navigable water. The first Kings of England, after the Conquest, assumed the right and power to parcel out the lands of the Kingdom, including those under the navigable waters, and to convey them absolutely into private ownership. This power was rightly exercised, because the Kings were in fact the state. Under this authority, the land under a very large portion of the navigable waters of the Kingdom of Great Britain became vested in private ownership. In the course of time, however, other necessary ingredients of the state began to assert themselves, and the barons forced from the King a promise that the navigable waters should, whether the title to the land under them was in the King or in private ownership, remain free for common use. This is the basis of all contentions that such waters are held in trust for public use. But it will be noticed that thus far nothing has occurred except a mere limitation upon the arbitrary power which the King had been wont to exercise. He might still convey the lands under the water into private ownership; but after the power of Parliament increased, it enacted laws placing the King's domain under the supervision and control of commissioners, who should make the grants for the public good. Finally, as stated by Freeman (Growth of English Constitution, p. 140) a custom arose which became as strong as law, that at the beginning of each reign the sovereign should give back to the nation the land which he had been in the habit of treating as his own, so that now the royal demesnes are handed over to be dealt with like other revenues of the state, to be disposed of by Parliament for the public service. Thus the King has lost his power to make private grants of the lands under the waters, but the power of the King has been merely transferred to Parliament as the present dominant factor in the government. There is nothing except public opinion to prevent Parliament from exercising

all the power which the King originally possessed, so that it might grant the lands into private ownership, or close waters against the public, if it chose to do so.

At the close of the Revolution the states of this country acquired not only the power of the King, but that of Parliament also; in fact, they became sovereigns, with all the power that it is possible for a human sovereign to exercise; and this power, in the absence of constitutional restriction, is, so far as lawmaking is concerned, vested in the legislature. When, therefore, the courts say that the navigable waters are vested in the state, to be held in trust for the common benefit of the people, their vision has been obscured by the limitation which was placed on the power of the King, and they have lost sight of the larger and absolute power of Parliament to deal with the matter as it sees fit, and have based their rulings on the trust imposed upon the former, which is in no way applicable to the legislatures; and therefore, so far as they are based on the trust theory, their rulings have no solid foundation upon which to rest.

The Federal government, in providing for the formation of new states out of territory held by it, in many instances provided that all navigable water ways should forever be kept open for purposes of commerce. In all states which acquired their titles under such provisions, a trust exists which prevents the closing of the water ways, but it does not prevent the granting of the title to the soil into private ownership, because the trust would attach in the hands of the private owner, the same as though the lands had remained in possession of the state. The courts of these states which have denied the power of the legislature to grant the property to private holders, on the trust theory, have therefore exceeded their authority, and their decisions are of doubtful value, because the courts have no power to control the acts of the legislature, except where it is given them by the Constitution, or the Constitution has placed a limitation on the legislative power. In any event, the decisions of these states cannot be regarded as sound reasoning, in states which do not hold their water ways under a trust imposed by Congress; and states of the latter class which follow decisions of the former will necessarily be led into error. The constitutional rights of the riparian owner are sufficient, in most instances, to protect the water way against destruction by the legislature, but they do not prevent a grant of the land underneath it to private owners. In fact, in the absence of express constitutional prohibition, there is no principle of trust to be found in the common law which will prevent the legislature from making such grants; and when the courts attempt to annul grants upon a trust theory they are usurping authority much more seriously than is done by the legislation which they are condemning. There being no trust which prevents the legislature from granting the water ways into private ownership, is there any which prevents its closing them against the public? While it would be physically impossible to destroy many of the bodies of water which are subject to the right of navigation, such fact does not apply to the passage of statutes forbidding their use, and thus effectually closing them against the public. If the whole people would decide to close such a water way, there is nothing to prevent their doing so. Is there anything to prevent the legislature, as the representative of the people, from taking such action? Certainly no theory of trust will prevent it, any more than in the case of an attempted grant of the soil. By the Constitution the legislative power is vested in the legislature, and it is conceivable that the closing of navigation in some particular case might so utterly ignore the interest of the public that it would not be regarded as a legislative act, and therefore the courts might declare that it was beyond the power of the legislature to perform. The power of the legislature is limited to the protection and enhancement of the public rights, and it has no authority to destroy such rights. There are many ways in which the change in form or the restriction of the use of navigable waters will redound to the benefit of the public, and as far as they will do so the legislature has power to effect the change; and it is entitled to the benefit of the presumption in every

case that the statute is for the public benefit, so that it must be upheld if possible; but if it clearly appears that the change is not for the public benefit, but for some ulterior purpose, such as the enrichment of individuals at the expense of the public, so that it is plainly evident that the act is not a legitimate exercise of legislative power, the courts may so declare, and annul the statute. These rules would seem to effect the most satisfactory result. They permit the title to the lands under tide waters to be granted to individuals, if for any reason the legislature thinks the public welfare will be best subserved by so doing; but a mere grant of the soil will not entitle the grantee to interfere with the rights of navigation. Such power must be expressly granted; otherwise it does not exist. If the right is granted, it may be upheld so far as necessary for the improvement of navigation, the construction of necessary aids to commerce, the transformation of water not of great value for purposes of navigation, into dry land, which is of more apparent value to the community, the bridging of streams, or any other purpose which may subserve the public welfare. But should the legislature attempt to grant the exclusive right of navigation to any individual, or empower him to turn the water way into a private fish pond or recreation ground, or in any other way surrender the public rights for private benefit, it would exceed its power, because it would not be a true legislative act, any more than would the legalizing of murder, or the granting into private ownership of the state capitol building without compensation, in aid of a private enterprise. But this results from an absence of legislative power, because it is not a true legislative act, and not from any theory of trust under which the property is held.

MOTION FOR REHEARING

By "Bill Barrister."

Oh, the motion for rehearing
Is a motionless attack;
If it does not harm the winner
It surely sets him back.
We sometimes read about it
In the papers and reports,
How it clogs the wheels of justice
In well-regulated courts.

It loafs around the pigeonholes,
It lingers with the clerk,
It waits until the judges
Have done all their other work;
It's well preserved and healthy,
And good enough to keep;
Hence judges seldom wake it
From its everlasting sleep.

There's a better day a'coming,
When this motion will be first,
Among the things considered,
And no longer will be cursed;
When the courts will note its filing,
And no longer let it mar
The golden bond of harmony
Connecting bench and bar.

The Third Degree

BY HENRY C. SPURR

THE author speaks a good word for the "third degree." He views the question from the standpoint of a former public prosecutor, and sees no reason why justice should be sacrificed through excessive courtesy to criminals.

MUCH has been said in the newspapers and magazines of late, about the practice of eliciting confessions of crime by means of supposed dark and devious methods, popularly and picturesquely called "the third degree." If the police have been none too gentle in handling their so-called victims, they have themselves come in for a pretty hard pounding from their numerous critics. One writer to a newspaper, for example, is so scandalized by what officers do to prisoners when they get them that he says: "What should the law give to such official assassins? No bandit, thug, or murderer could be more dangerous to the peace and security of society than the uniformed ruffians, the lawless servants of the law, who perpetrate such atrocities."

It is, of course, a mistake to infer, from the strong language in which some of the correspondents express their abhorrence of this system, that the editors themselves, or other persons in a position to know the law and the facts, are very much alarmed over the custom of getting persons under arrest to tell what they know about serious crimes. Nevertheless, there appears to be quite a widespread feeling that those who have the ill luck to fall into the hands of the police do not get fair treatment, and that, unless they are on their guard, the officers will, by means of this powerful weapon, the third degree, convict them out of their own mouths, whether they are guilty or not. One of the late dramas entitled "The Third Degree," by that clever writer writer of plays, Charles Klein, has the supposed iniquity of the present system for its main theme. But this is not all.

The Hon. Orlando Hubbs, of Long Island, came forth at the present session of the New York senate, with a bill designed to shield persons under arrest from the terrors of this modern inquisition, as some of the observers are pleased to call the police practice of questioning prisoners. The bill makes any admission by the defendant while under arrest inadmissible as evidence unless corroborated by a disinterested person, and the defendant has been advised that his admissions may be used against him.

As in the case of the good deacon who always accepted every adverse stroke of fortune with resignation, but who finally declared it was about time to express his sentiments when one day a tornado came along, uprooted his trees, leveled his fences and barns, and knocked the deacon himself in a heap behind his cow stables, it would seem as if the time had come to say something on the other side of this question, on behalf of a sane administration of the criminal laws for the protection of life and property, especially in view of the fact that we in America have already been at such pains to safeguard every interest of the accused that it sometimes takes as long as three months to get a jury in a criminal case, and when, by reason of delays and technicalities and new trials, the course of justice is so impeded and the punishment of crime made so uncertain that our administration of the criminal law has caused us to become a laughing stock in other countries. Before making this new crossing suggested

by Senator Hubbs, is it not our duty to stop and look and listen?

In the early days of the last century, nothing could be more chivalrous than the politeness with which the courts treated the prisoner at the bar. If an overzealous constable at that time so much as said to the accused, Sir, beware how you talk, for anything you say will be used "against" you on the trial, a confession then made would be excluded on the theory that this was an improper inducement, so very nice and punctilious were the judges on this point. But it was found that this would not do, and, at last, Erle, J., in R. v. Balder, 2 Den. & P. C. C. 430, was led to say that in his judgment, in many cases where confessions had been excluded, justice and common sense had been sacrificed, not at the shrine of mercy, but at the shrine of guilt. That was said about the policy of the law a hundred years ago. What is there about our present treatment of confessions that calls for legislation to protect the accused?

The short rule, generally given, is that the admissions of the defendant must be voluntary. Any statement which is the result of hope or fear inspired by a police officer or other person in authority cannot be used on the trial. A prisoner cannot be put into a sweat box 6 by 8, carefully blanketed to exclude light and air, and kept there until he announces he is ready to talk; nor can he be whipped or beaten or strung up to a tree by the neck, or tied across a log and admonished to tell whether he is guilty; nor can he be taken out of jail and, in the presence of a standing gallows, commanded by the officer in charge to tell what he knows about the crime with which he is charged; nor can he be subjected to any sort of violence whatever. This the law will not allow. Anything forced from the accused in that way, therefore, is as if it had never been spoken, for it cannot be used.

On the other hand, under the rule that a confession must be voluntary, it need not be spontaneous. So, there is no law against asking questions, and the fact that the person interrogated is at the time under suspicion or under arrest, in jail or in irons, or that he does not know that he is suspected or that there is a charge against him, or the fact that he is under great excitement or mental distress, is without counsel, is under a misapprehension as to his rights, and is unaware of the consequences of a confession and is not cautioned, makes no difference. It is immaterial even whether he is in the full possession of his faculties, so as to realize what he is doing; and, worse and worse, it has been held that admissions of the defendant may be used against him, although they were got by artifice or fraud, and even by the use of intoxicating liquors. This much, in the absence of statute, the law allows. Now, when we glance over this list, shall we cry for shame? That depends upon the point of view.

An examination of the cases will show that the courts have been influenced by two theories as to the propriety of the use of confessions. The first of these may be called the humanitarian theory. It is responsible for all the courtesies that have been extended to persons accused of crime, for the delays and the technicalities which have made the administration of the criminal laws at the present day so slow, so uncertain, and in many respects so unsatisfactory. As applied to the exclusion of confessions, it has been called by Jeremy Bentham, in his "Rationale of Judicial Evidence" (7 Bentham's Works, Bowring's edition, p. 454 ff.), "the fox hunter's reason." He says: "This consists in introducing, upon the carpet of legal procedure, the idea of 'fairness,' in the sense in which the word is used by sportsmen. The fox is to have a fair chance for his life; he must have (so close is the analogy) what is called 'law,'—leave to run a certain length of way for the express purpose of giving him a chance for escape. While under pursuit he must not be shot; it would be as unfair as convicting him of burglary on a henroost, in five minutes' time, in a court of conscience."

The other theory is that confessions are to be excluded only when there is reason to believe that they may not be true. If they appear to be reliable, the fact that the accused may have been taken off his guard is no objection to them, since the punishment of crime is not a sport or a game, but a serious business,

made necessary for the welfare of society and the protection of life and property. "The reason for the exclusion of confessions," says the court in People v. Wentz, 37 N. Y. 304, "is not because any right or privilege of the person has been violated, but because it is deemed unsafe to rely upon it as evidence of guilt."

The best reasoned cases hold to this theory. The idea that a confession can be used although it is drawn from the accused by artifice, by leading him, for instance, to believe that an accomplice has told all, when he has not, or by listening at a keyhole to a conversation between the accused and a fellow prisoner, does, at first thought, come with something of a shock. But do we not put decoy letters in the mails to entrap thieving postal clerks, and do we not mark money to catch boodlers and blackmailers? If it is once conceded that a confession obtained by artifice is true,—if it shows the defendant to be guilty, say of a heinous crime,—is it not better for the welfare of society that the confession be used and that he be punished, than that he be let go because, perchance, the method by which he was induced to talk was not one which would be considered quite fair as between honest men. The accused, himself, if guilty, is hardly entitled to as fair treatment as if he himself had "played fair."

There is, of course, some real danger that confessions may not be true. It would hardly seem as if an innocent man would admit the commission of a serious crime; but experience has amply shown that they may do so. It has been said that "the human mind, under the pressure of calamity, is easily seduced, and is liable, in the alarm of danger, to acknowledge indiscriminately a falsehood or a truth as different agitations may prevail." 2 Hawk. P. C. 6th ed. p. 604. Let this be conceded. Then, if the reliability theory as to the admission of confessions is sound, the problem of dealing with the third degree is not whether the personal comfort of the accused is likely to be disturbed, but whether admissions secured in this way can be depended upon. Are innocent men being browbeaten into confessions of crime by means of the third degree?

In Mr. Klein's play, "The Third Degree," the theory that an innocent man may be made to confess a crime by the aid of hypnotic suggestion is elaborated. Harold Jeffries, Jr., the victim of the police, visits a friend, Robert Underwood, at the latter's apartments, for the purpose of borrowing money. Underwood is in serious trouble due to financial embarrassment, and informs Jeffries that he can loan him nothing, but he fills him with liquor, and Jeffries, at last, in a drunken stupor, goes to sleep on a lounge. Then Underwood steps into the next room, and commits suicide by shooting himself. When the police arrive some hours later, Jeffries has partially come out of his stupor, and is discovered trying to get out. He is, of course, supposed to be guilty of murdering Underwood. The third degree is at once put into operation, but the victim steadily denies all knowledge of the killing until the police captain holds up the pistol with which the shooting was done, so that the light shines upon it and attracts the eye. The dazed man looks at the pistol, which is supposed to accomplish the act of hypnotism. After this he is completely receptive, and this dialogue takes place:

Detective: "You committed this crime, Howard Jeffries." (Howard Jeffries gazes at him with a fixed expression.)

Detective: "It's a clear case, Captain."

Captain: "It's as clear as daylight." (Looks at Howard.) "You did it, Jeffries. Come, own up. Let's have the truth. You shot Robert Underwood with this revolver. You did it, and you can't deny it. Speak!"

Howard (as if repeating a lesson): "I shot Robert Underwood." (Detective signals to take notes. Detective goes back to Howard.)

Detective: "You shot Robert Underwood."

Howard (repeats): "I shot Robert Underwood."

Captain: "You quarreled."

Howard: "We quarreled."

Captain: "You came here for money."

Howard: "I came here for money."

ACT I, SCENE II, IN CHARLES KLEIN'S DRAMA, "THE THIRD DEGREE."

Captain: "He refused to give it to you."

Howard: "He refused to give it to me."

Captain: "There was a quarrel."

Howard: "There was a quarrel."

Captain: "You followed him into that room."

Howard: "Followed him into that room—"

Captain: "And shot him."

Howard: "And shot him."

This, of course, will do for entertainment, which is probably all that was intended, but it can no more be taken for a faithful portrait of the real third degree than the trial scene in "Pudd'nhead Wilson" can be understood as an accurate portrayal of actual criminal procedure. As a matter of fact, the police do not seek to get confessions from men, innocent or guilty. The innocent have little to fear from the ordeal of the third degree, but the guilty have much to dread. No doubt the practice is subject to abuse, and the persons undergoing examination do not always have a pleasant time, but the purpose of the officers is to discover the guilty, and not to fasten the crime on the innocent.

It is unquestionably true that many criminals have confessed their guilt, or have made admissions which have led to their conviction, under the "grilling" of the police, which they would not have done if they had had time for deliberation, or had had an opportunity to consult counsel. Many have been convicted when they would have gone free, had they kept still, but this is far from being against the peace and welfare of society. It is rather for its benefit. As before stated, it is the serious business of the state to discover and punish the guilty, and, if the police are assisted in their part of this duty by the employment of the third degree, honest men need not be conscience stricken because the process is not always entirely fair, in the sense that word is used by the sportsman, to the criminal.

But conceding the purpose of the po-

lice to be honest, are unreliable confessions produced by means of the third degree? Confessions extracted by means of physical torture are worthless. Are statements drawn out by this so-called mental inquisition also not to be relied on? When it is remembered that nothing that can operate on the hopes or the fears of the accused is permitted, nothing that can be construed either as an inducement or a threat is allowed, it would seem as if little room were left to lead an innocent man to say he is guilty. An examination of all the reported cases on the subject will show in fact that there is little chance of this. And if this is so, the proposed New York law would not be a benefit but a menace to the state.

If Senator Hubbs's bill should become a law, it would practically shut out all confessions, for, in cases in which they might be useful, how are they to be corroborated by a disinterested person? Who is this disinterested person to be? It would mean that conviction must be secured without confessions. The provision with reference to cautioning the accused can, however, do but little good or little harm. Texas already has a statute requiring this to be done. Since the maxim *nemo tenetur se ipsum accusare* does not apply to extrajudicial confessions, the only purpose of warning the accused would be to advise him that any statement he might make could be used against him. While a defendant might not know that he could not be compelled to testify under oath against himself, and therefore ought to be cautioned, it is scarcely possible to believe that a person under arrest would not know that the police were hostile and were questioning him for the purpose of using his admissions against him. As a matter of fact, the caution is given as a preface to the third degree in many cases, under the mistaken notion that it is necessary. The requirement in the senator's bill as to cautioning the accused is therefore well enough in the sense that it is useless and harmless.

If there is to be any restriction in the use of confessions, it would seem as if it ought to be aimed at verbal admissions. These are oftentimes extremely unreliable, because the words of the accused may have been misunderstood and misinterpreted, and because he may be misrepresented, owing to the infirmities of the memory of witnesses, and, also,—to concede a point,—by the desire of an overzealous public officer to convict one who he believes guilty of a crime. But if the confession is signed by the accused, or taken down accurately when it is made, and there is every reason to believe that it is true, it would seem as if it ought not to be rejected simply because it was obtained by means of the third degree.

Hugh C. Weir, writing in the World To-day says that 10,000 persons are murdered in this country every year—shot, strangled, poisoned, stabbed, or beaten with a sand bag—and of those guilty of these crimes only two in every hundred are punished. Assuming, but not vouching, for the accuracy of these figures, it would be hard to say how much of this condition is due to our exceeding solicitude to surround the accused with all sorts of privileges and to give him every possible chance of escape, but certainly much of it. On every side the cry is raised that we are altogether too lax in the enforcement of our criminal laws. It would seem as if no necessity had yet been shown for the erection of a new barrier to the punishment of crime by the abolition of the third degree.

The Editor's Comments

Case and Comment

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Compensatory Administration of Criminal Law

SUPREME Court Justice Marcus, of Buffalo, and certain other judges, says the Corning Leader, have recently been dealing with special classes of criminal cases in a manner which is worthy of careful consideration elsewhere. These judges have required offenders guilty of assaulting persons, or injuring or stealing property, to pay the aggrieved parties for the damages or losses sustained. Justice Marcus in one case recently placed on probation a clerk convicted of stealing from his employer, and directed him while thus conditionally released to repay to the employer $250 in instalments adapted to his earning capacity. Another case disposed of by Justice Marcus was that of a chauffeur whose automobile accidently killed a child. The court released the man on probation, with the understanding that he pay the child's father $1,000. In view of the past character of these defendants, and of the circumstances of their offenses, imprisonment would have been unwise; and neither imprisonment nor a fine would have resulted in any way to the benefit of those who had suffered.

The practice of requiring restitution is just to the victim of a crime, and has a wholesome effect on the offender. Good sense would seem to declare that a man who steals from another should be ordered to repay the stolen amount. The laws of our state do not specifically provide for the collection of restitution in criminal cases. The probation system, however, based, as it is, on the theory that a court in suspending sentence and placing a defendant on probation may order the person to obey such reasonable conditions as seem essential, offers a means whereby judges can direct defendants to make reparation for injuries they have inflicted.

Restitution has been collected by probation officers also, in inferior courts, in less serious cases. Men guilty of disorderly conduct have been obliged while on probation to pay for damages to property, occasioned by their rowdyism. Children on probation have been made to pay an equivalent for losses resulting from

their petty thefts or malicious mischief. The amounts involved have sometimes been trifling, as when a child has been made to pay 50 cents to replace a broken window; but the moral and disciplinary influence on the child, of requiring the settlement, has been important. The practice of requiring restitution is based on sound ethical principles, and the cases are numerous in which the measure is applicable.

Swapping Testimony

MR. Paul D. Judge, of the bar of the city of New York, animated by the laudable desire to simplify and expedite litigations, has evolved a plan, which in his esteem, if adopted, will go some distance in the direction of realizing this wish. The author of the plan referred to has favored us with an outline of the scheme, and a draft of a proposed new section of the Code of Civil Procedure designed to put it in operation. This plan is presented seriously, and the good faith of the author seems plain. It, therefore deserves respectful consideration by all who are friendly (and we count ourselves among these) to schemes which promise to accelerate litigations and eliminate their unnecessary incidents. Mr. Judge's plan, concisely stated, is for either party to an action, as soon as it is well started, at his election, to furnish his opponent, in the form of affidavits identifying the witnesses and their relations to the case, a synopsis of the direct testimony which he purposes to offer at the trial, and, on doing so, to compel his adversary to reciprocate. The affidavits are to fulfil a function analogous to a bill of particulars. Provision is made for introducing newly discovered evidence by leave of the court. The trial to be had is to proceed much as now, with respect of the direct and cross-examination orally of witnesses on both sides, except that additional witnesses cannot be called, nor additional facts be proved. Obviously this plan imposes additional labor upon attorneys, and increases the volume of the record in every contested case; but Mr. Judge anticipates that there will be corresponding gains in these respects, which will more than offset. The sophisticated mind will also see in such a plan the greater opportunities it affords over the present methods for the unscrupulous to tamper with the witnesses for the other side. Mr. Judge has either not thought of it, or he has not deemed this objection weighty. At all events, he has ignored it. The peril suggested is, however, very real, and ought not lightly to be challenged without great countervailing advantages, which we are unable to perceive in Mr. Judge's plan. Without enlarging upon that objection, however, we question much if this plan would, if put in operation, accomplish its avowed end. Candidly, we believe that such a plan would complicate, instead of simplify, litigation, and increase, rather than lessen, the law's delays, beside adding to the burdens, already heavy, which rest upon the working lawyer. One needs only to recall the flood of decisions, still rising, which began as soon as the New York Code of 1846 was enacted, and grew in volume as fast as an "Act Supplemental Thereto and Amendatory Thereof" became a law, which construed, interpreted, broadened, restricted, and nullified provisions regulating practice in this state to scent more trouble of the same sort. And the practitioner has only to conjure from his memory the many wrangles in which he has participated over the obtaining and perpetuating of testimony, to be dubious, when, with this plan operative, the inevitable attempt in a trial is made to call a witness or bring out testimony over the prompt objection that it is not within the scope and meaning of the antecedent affidavits. We cannot give approval to Mr. Judge's well-meant proposal.

Method of Transportation as a Criterion of Crime.

AT times a legal fiction proves a snare for the unwary logician who reasons from analogy. For example, there is the rule that upon a sale of goods a delivery to a common carrier for transportation to the purchaser is a delivery to the buyer,—a bit of fiction universally accepted as truth. By this rule a liquor dealer who receives in Philadelphia an order for liquors from a customer in another part of the state, and ships the goods by common carrier, completes a sale and delivery at Philadelphia.

In Commonwealth v. Hess, 29 Weekly Notes of Cases, 562, the defendant, a licensed dealer in intoxicating liquors, received an order for beer and ale from a customer in the neighboring county of Montgomery, in which he had not a license. He selected the goods, but, instead of sending them by a carrier, he put them on his own wagon and had his servant drive over to the next county, and give them to the customer. Because he adopted this convenient and cheap method of delivering his goods, he was indicted and convicted in Montgomery county of violating the excise law, fined $500, and sentenced to three months in jail. He naturally objected, and applied for a review of his trial by the Pennsylvania supreme court, and obtained a reversal. Chief Justice Paxson, who delivered the opinion of the court, put forth this logical gem: If we sustain the court below in this case, we are brought face to face with this proposition: that if a wholesale dealer in liquor receives an order from a customer in an adjoining county, and in pursuance of such order delivers the liquor to a common carrier for transportation, he is a law-abiding citizen; whereas if he delivers the liquor in his own wagon, in the usual course of business, he is a criminal and liable to both fine and imprisonment. If this be the law, it is certainly not the "perfection of reason." On the contrary it is the climax of absurdity, and cannot fail to shock the common sense of every business man in the community.

A Taxicab not a Carriage

IT is not a criminal offense to refuse to pay a taxicab fare, according to a decision recently rendered by the supreme court of Massachusetts in the case of Commonwealth v. Goldman. The only question was whether the word "carriage," in the Massachusetts statute making it a crime to defraud the owner by refusing to pay the lawful fare for the use of a horse or "carriage," included automobiles. The court says: "It is certain that when this statute was originally enacted, the legislature, in using the word 'carriage,' had no thought of a vehicle made up in large part of complicated machinery, and propelled by a powerful engine whose operation is similar to that of a locomotive engine on railroads. While such vehicle may be called a carriage in the broad sense that it is used to carry persons and property, it is not commonly referred to as a carriage, but is distinguished from carriages by another name to designate a vehicle of an entirely different character. We are of opinion that automobiles are not included in this statute.

Legally, then, the taxicab is still unclassified with respect to its commercial rights. This is a condition for which the legislature of Massachusetts will doubtless furnish relief."

Among The New Decisions

This department briefly treats recent important decisions of the United States Supreme Court, the state courts of last resort, and foreign tribunals. Those cases are selected which lay down new principles or make novel application of an old one.

State exclusion of foreign corporation. In the recent cases of Western U. Teleg. Co. v. Kansas (U. S. Adv. Sheets 1909, p. 190), Pullman Co. v. Kansas (U. S. Adv. Sheets 1909, p. 232), and Ludwig v. Western U. Teleg. Co. (U. S. Adv. Sheets 1909, p. 280) the United States Supreme Court has rendered important and far-reaching decisions which tend greatly to diminish state control over interstate carriers. These cases hold that a state statute requiring foreign companies desiring to engage in intrastate business to file copies of their charters with the secretary of state, and pay a charter fee based on the total amount of the company's capital stock, is invalid as to interstate carriers as imposing a burden or tax on the company's interstate business and on its property located and used outside the state. It is difficult to see how a statute restricting the right of a corporation to engage in intrastate business can be said to interfere with interstate commerce; nor can such an effect be attributed to the charter fee sought to be imposed. It is possible that the result of basing the charter fee on the total capital of each corporation might operate to the disadvantage of those having a large capitalization, but the power of the state to determine upon what terms foreign corporations may do business within its borders has heretofore been supposed to be unrestricted.

Damages for carrier's delay in delivering receptacles for perishable goods. This question, which seems to have been before the courts but once before, is presented by the recent Florida case of Williams v. Atlantic Coast Line R. Co. 48 So. 209, 24 L.R.A.(N.S.) 134, holding that a carrier which has failed to deliver within a reasonable time orange boxes intrusted to it for transportation is not liable for the loss and damage sustained by reason of the enforced idleness of persons employed to pack and ship the oranges, where the carrier was not informed of the employment of the men, or the time within which the oranges were to be picked, and the contract of carriage did not fix any specific time for the transportation and delivery of the boxes. It is also held that the freezing of the oranges on the trees is not so direct, natural, and proximate a result of the failure of the railroad company to furnish the boxes as will render it liable, where it was not informed that the owner would leave the oranges on the trees until the boxes were delivered. The decision is based upon the principle that, if the owner of goods would charge the carrier with any special damages, he must communicate to the carrier all the facts and circumstances of the case which do not ordinarily attend the carriage, or the peculiar character and value of the property carried.

Abandonment of private way by improvements inconsistent with its use. This interesting question is considered in the recent Utah case of Brown v. Oregon, S. L. R. Co. 102 Pac. 740, 24 L.R.A.(N.S.) 86, holding that an easement of way created to furnish access from dwellings privately owned, to a public street, is abandoned by the acquisition of the property for railroad purposes and the removal of the dwellings and other buildings and trees therefrom. The earlier decisions involving this question are collected in an extensive note in 22 L.R.A.(N.S.) 880.

Stockholder's agreement to ignore corporate forms. An agreement between two individuals purchasing all the stock of a business corporation, that they should be partners, having equal voice and equal control in the management and business of the company; that the corporation should be treated as a mere agency in carrying out the copartnership agreement; that the directors, other than the two parties, should be mere nominal directors; that corporate forms should be ignored, and the business transacted and treated as a partnership business,—is held in the recent case of Jackson v. Hooper, decided in the New Jersey Court of Errors and Appeals, not to be enforceable in equity, and it is held that the rights of the parties must be administered as shareholders in the corporation, not as partners.

Right of parent to select child's studies. On the question of the selection of studies there is some conflict of authority as to the right to expel a scholar, where the parent interferes and requests that his child shall be excused from such study, some cases denying the right to expel, while others, fewer in number, affirm it. The recent Oklahoma case of School Board District No. 18 v. Thompson, 103 Pac. 578, 24 L.R.A.(N.S.) 221, adopts the former view, holding that a parent has a right to make a reasonable selection from the prescribed course of study for his child to pursue, and this selection must be respected by the school authorities, as the right of the parent in that regard is superior to that of the school officers and the teachers.

Prohibiting possession of liquor for personal use. That the police power does not extend to the deprivation of the right of a citizen to have intoxicating liquor in his possession for his own use is held in the recent Kentucky case of Commonwealth v. Campbell, 117 S. W. 383, which further determines that a constitutional provision that the question of permitting the sale of intoxicating liquors in any locality shall be submitted to its voters deprives the legislature of the power of forbidding citizens to have such liquor in their possession for their own use. The decisions relating to this subject are collected in a note accompanying the Campbell Case in 24 L.R.A.(N.S.) 172, and seem generally to uphold the right of a person to keep liquor in his own home or place of business, when intended for his own use, and not for sale. The preferable view doubtless is that prohibitory legislation can properly deal only with the traffic in intoxicating liquors, and should not extend to the private act of consumption.

Temporary obstruction of street to load or unload vehicle. The obstruction of a sidewalk for the purpose of loading or unloading merchandise has been justified repeatedly on the ground of necessity, provided the obstruction is reasonable in extent and does not amount to a nuisance. In conformity with this view it is held in the recent case of John A. Tolman & Co. v. Chicago, 240 Ill. 268, 88 N. E. 488, that the necessary use by a merchant of skids across a sidewalk to load and unload goods between his place of business and wagons in the street is not unlawful of itself and a nuisance. The decisions dealing with the duty and liability of one who maintains such a temporary obstruction are collected in a note appended to the report of the case in 24 L.R.A.(N.S.) 97.

Emancipation by marriage. It has been generally held by the courts that the marriage of a male or female infant, with or without the parent's consent, works an emancipation as between parent and child. This doctrine is further confirmed by the recent New York case of Cochran v. Cochran, 196 N. Y. 86, 89 N. E. 470, holding that a minor validly married is entitled to his earnings as against his father, so far as necessary for the support of his family. The more recent decisions involving the question are collated in the note accompanying the report of the case in 24 L.R.A.(N.S.) 160, and are supplementary to the note to Com. v. Graham, 16 L.R.A. 578, which discusses the earlier cases.

Registration and publication of internal revenue receipts. The right of a state to require the holder of a receipt for the payment of the Federal internal revenue tax upon the business of selling intoxicating liquors to register and publish the same at his own expense is denied in North Dakota ex rel. Flaherty v. Hanson (U. S. Adv. Sheets 1909, p. 179) which holds that such a statutory requirement is not a valid exercise of the police power, but is invalid as placing a direct burden upon the taxing power of the Federal government. The court considers that the statute adds onerous burdens and conditions to those for which the act of Congress provides, and regards them as inconsistent with the paramount right of Congress to exert, within the limits of the Constitution, an untrammeled power of taxation.

Legality of discounts to customers by telephone companies. A discount of 25 per cent from regular local rates, given by a telephone company to a municipal corporation, charitable institutions, and clergymen, is held by the appellate division of the supreme court of the state of New York, first department, in New York Telephone Company v. Siegel-Cooper Company, neither to amount to an unfair, unjust, or unreasonable discrimination as against other customers, nor to be illegal.

Liability of one maintaining nuisance by storing dynamite. One who stores a large quantity of dynamite in a shed near a highway and a railroad track, without notice to the public, is held not liable, in McGehee v. Norfolk & S. R. Co. 147 N. C. 142, 60 S. E. 912, 24 L.R.A.(N.S.) 119, to a person who, without right, uses the building as a target for gun practice, thereby causing an explosion, since such a result could not have been foreseen, and therefore no duty existed to notify the trespasser of danger. It is further determined that the negligent storing of the dynamite is not the proximate cause of the injury sustained by the trespasser under such circumstances.

What a special verdict must contain. The question as to what a special verdict must contain is considered in State v. Hanner, 143 N. C. 632, 57 S. E. 154, 24 L.R.A.(N.S.) 1, holding that such a verdict, to support a conviction, must find the ultimate facts necessary thereto, and that it is not enough merely to state the evidence, although it is sufficient to warrant the presumption of the existence of facts not distinctly found. This holding is in accord with the cases upon the subject, as disclosed by the elaborate and exhaustive note which accompanies the L.R.A. report of the case.

Use of voting machine as election by ballot. The decision in the recent case of Stone ex rel. Korlinger v. Board of Deputy State Supervisors, 80 Ohio St. 471, 89 N. E. 33, 24 L.R.A.(N.S.) 188, which holds the use of voting machines at elections to be repugnant to a constitutional requirement that "all elections shall be by ballot," is probably incorrect,—at least it is at variance with the conclusion arrived at by the courts of last resort in four other states.

Legality of combination among underwriters. As a rule, combinations or agreements relating to insurance are valid, both at common law and under statutes relating to combinations and monopolies, where their principal purpose is to promote the business welfare and convenience of the parties thereto, provided they are not unreasonably in restraint of trade or formed for the purpose of regulating and controlling the rate of premium to be charged. Tested by this rule, a regulation of a board of fire underwriters of a city, organized to promote harmony and correct practices in fire underwriting, that no member shall take the agency of a company which is already represented in the city, is held in the recent Kentucky case of Louisville Bd. of Fire Underwriters v. Johnson, 119 S. W. 153, 24 L.R.A. (N.S.) 153, not to be unreasonable, arbitrary, oppressive, or contrary to public policy. The prior cases upon the question are discussed in a note accompanying the L.R.A. report of the case.

Trespass by a ball. An odd case of trespass was tried recently in the British courts, as a result of driving a cricket ball beyond the boundary of the club's property. The same ruling might be applied to baseball here. The action was brought against the Burnage Cricket Club and C. A. Butt, a member of that club. During a match, Butt knocked the ball into adjoining property owned by James Topping, and hit the plaintiff on the head. Topping was on his own property, attending to his own affairs, and was not watching the match; and his counsel argued that the batsman and the officials who had arranged the match were jointly responsible for any damage that resulted. The defense was that it was necessary to show negligence on the part of one or all the defendants.

Judge Parry in giving judgment reviewed the ancient game of cricket, how it had developed from a sport on an open common or field, which spectators could attend or avoid, at option, to a pastime between enclosed areas; those areas in divers cases being insufficient for the traveling propensities of the propelled ball. The pith of his judgment lay in his analogy to Lord Ellenborough's judgment as to noncontrol of a dangerous animal, and he said: "If in the playing of a game, players let loose a moving ball liable to injure, and left it to the hazard of the skill or the power of the other players to keep the ball within the bounds and limits of the game that they had chosen for themselves, whereby it escaped from their control, and injured a person who was not a player or a spectator of the game, but an ordinary citizen lawfully going about his usual pursuits, he could not see why an action for trespass should not lie;" and again he remarked, later: "Here were a body of persons brought together for the purpose of amusement, and using a dangerous missile, which they failed to keep under control; thereby injuring the plaintiff." Upon this ground he awarded $75 damages and costs.

Conclusiveness of witness's statement that answer would incriminate him. It is now well settled by numerous decisions that it is not sufficient to excuse a witness from answering, that he may, in his own mind, think his answer to the question might by possibility lead to some criminal charge against him, or tend to convict him of it if made. The court must be able to perceive that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. The authorities on this question are reviewed in a note in 24 L.R.A.(N.S.) 165, accompanying the case of McGorray v. Sutter, 80 Ohio St. 400, 89 N. E. 10, in which it is held that when a witness refuses to answer a question propounded to him, basing his refusal upon the alleged reason that his answer would incriminate him, his answer is not conclusive with respect to the incriminatory character of the evidence sought to be elicited, and he may be required to answer, if, by any inquiry which does not invade his immunity, it is made to appear to the trial judge that his answer would not have the tendency claimed by him.

Liability for injury by fall of object suspended over street. An interesting question is presented in the recent case of McCrorey v. Garrett, 109 Va. 645, 64 S. E. 978, 24 L.R.A.(N.S.) 139, which holds that one not acting under legislative authority maintains an awning over a public sidewalk at his peril; and a traveler injured thereby, who is himself free from blame, may recover damages from the owner of the awning, regardless of the question of negligence in its construction and maintenance. This case apparently imposes a greater liability upon one suspending objects over a public thoroughfare than any of its predecessors, which, as appears by a note to Waller v. Ross, 12 L.R.A.(N.S.) 721, have generally limited the liability of one lawfully placing signs, awnings, and other objects over the street to injuries due to a failure to exercise reasonable care to see that they did not get into such a condition as to menace the safety of those passing beneath them.

Applicability of statutes regulating the practice of medicine. From time to time the question has arisen as to the applicability of statutes forbidding the practice of medicine without a license, to persons who offer to the public some special sort of treatment. The decisions in different jurisdictions have not been uniform, notably in respect to practitioners of osteopathy. In the recent case of State v. Bresee, 137 Iowa, 673, 114 N. W. 45, it is held that one who does not assume to be a physician may be convicted for prescribing and furnishing medicines for the sick, under a statute forbidding the practice of medicine without a license, and declaring that any person shall be deemed to be practising medicine who shall publicly profess to be a physician, or shall make a practice of prescribing, or prescribing and furnishing, medicine for the sick. The recent cases concerning the applicability of similar statutes are collated in the note accompanying this case in 24 L.R.A.(N.S.) 103, which is supplementary to an earlier note in 3 L.R.A. (N.S.) 763.

Scope of release under indemnity insurance policy. There is some conflict among the authorities, as shown by a review of them in a note in 24 L.R.A.(N.S.) 211, as to the validity of a release given upon payment for time already lost by one entitled to receive indemnity under a policy insuring against loss of time by sickness or accident. The recent case of Moore v. Maryland Casualty Co. 150 N. C. 153, 63 S. E. 675, holds a clause in a release by one insured against disability from sickness, upon receiving a draft for a claim for disability from illness which has not terminated at the time the claim is made, which relieves the insurer from all liability for all claim to indemnity growing out of that illness, will be interpreted in the light of the policy and proof of claim, and be limited to the liability which has accrued at the time the claim is prosecuted, and will not be extended to what subsequently accrues from the same illness.

Admissibility of testator's declarations to show intent in destroying will. The admissibility, as part of the *res gestæ*, of declarations made by a testator at the time he destroyed or canceled his will, and indicative of his intent in so doing, has never been seriously questioned. The great weight of authority also sanctions the admissibility of such declarations when subsequently made, as appears by the decisions collated in a note in 24 L.R.A.(N.S.) 180, accompanying the case of Managle v. Parker, 75 N. H. 139, 71 Atl. 637, which holds that subsequent declarations of a testator are admissible in evidence in a proceeding to probate a will which had been destroyed by him, upon the question of the intention with which the will was destroyed. Whether prior declarations are admissible is not so clear, although the cases which uphold their admissibility are greater in number than those which deny it.

New or Proposed Legislation

The Naturalization Law.—The new naturalization law, which has been in operation since September, 1907, has produced, says the Record-Herald, with other results, a marked improvement in the character, both moral and political, of foreign-born citizenship. The judges of several of the courts have referred to this fact in terms of commendation. Formerly, any court having a clerk, a seal, and common-law jurisdiction could bestow citizenship upon any aliens in its discretion. In some states even the police courts and probate courts engaged in that work. As was entirely natural under such circumstances, especially with petitioners of questionable antecedents, or such as were deficient in the qualifications to become good citizens, resort was had to the lower courts, where the press of other business and the informality of the procedure gave assurance that they would be able to slip through any examination that might be made, if not to escape examination altogether, and thus secure rights which might be denied to them in the higher courts. This recourse is denied to them by the provisions in the new law, which exclude from such authority those courts which are without jurisdiction in cases involving $1,000 or more.

Another very practical reform that has been accomplished by the new law is the removal of the temptation offered to political managers to secure votes at the last moment before an election by rushing through a large number of candidates for citizenship, under conditions that require speedy action, and therefore exclude anything like a careful inquiry into their qualifications. This has been changed by the new act. No man now may be naturalized until the expiration of ninety days after he has filed his petition for naturalization. During that interval an examination, both of such applicant and the witnesses he offers, is made by the government officers, who report the results in open court at the hearings of such petitions.

There is an additional precautionary measure in the new law, that no court shall issue a certificate within thirty days prior to a general election. If, therefore, a ward heeler desires to secure votes by having aliens naturalized, he can do so only by having the petitions of those persons whose votes he expects to use filed at least four months before such an election. This, however, would not be an insurmountable obstacle were it not for the fact that the four months allows full opportunity to ascertain the merits of each case, and thus to insure a rejection of those who are unfitted.

It is impossible for the government authorities to give any figures to show the extent of the reform, but the notoriety of the abuse in former days, coupled with the absence of any complaint on this score since its passage, is sufficient to show that the new law has proved effective in putting an end to fraudulent naturalization. This statement, however, must be qualified. The new law has not proved effective in all the states, but only in those where the right to vote is dependent upon actual citizenship. In other states where aliens are allowed to cast a ballot if such aliens have made a declaration of their intention to become citizens, the abuse continues, but it is due to the laws of the state, and not to any defect in Federal legislation. It rests with the authorities of those states to take appropriate measures to bring them into line with other states where suffrage is confined to citizens of the United States.

Expert Medical Testimony.—The scandal of expert medical testimony has been discussed by the bar associations of twenty states, and, as a result, in several of the legislatures bills have been introduced looking to a remedy of the evil. New York has been foremost in this reform, but the bill now pending before its legislature aims to "regulate the introduction of medical expert testimony," and seems to go but a short distance toward the heart of the trouble. The bill, in brief, provides that the judges of the appellate division shall appoint not less than 10 nor more than 120 physicians in each judicial district, any of whom may be called as medical or surgical expert witnesses by the trial court, or by any party to any civil or criminal action in any of the courts of this state, and when so called shall testify, and be subject to full examination and cross-examination as other witnesses are. Such examination is to include examination as to their competency. Any designation may at any time be revoked without notice or cause shown, and any vacancy may at any time be filled by the justices sitting in the appellate division. When so directed by the trial court, witnesses so called shall receive for their services and attendance only such sums as the trial judge presiding may allow, to be at once paid by the treasurer, or other fiscal officer, of the county in which the trial is had. The act declares that it shall not be construed as limiting the rights of parties to call other medical expert witnesses as heretofore.

This measure has the approval of the bar association, and probably will become law. It may be a step in the right direction, but it seems to leave large gaps for the entrance of the evils complained of. The official experts may be relied on, but what is to prevent the "other medical experts" from testifying to just what is desired, for so much money?

In Massachusetts, Judge Schofield, of the superior court, discusses the subject in the Boston Medical Journal. He finds a practical defect in all the bills presented (many have been presented in Massachusetts), concluding that medical expert testimony will go on as before, because the feeling is yet so strongly in favor of a man's right to select his own witnesses that no legislature will annul it.

Judge Schofield does believe, however, that there is one remedy, that now might go a long way, in the shape of a law regulating the fees and contracts of medical expert witnesses, and prohibiting them from accepting any different fees, and he suggests that medical societies can do much in forwarding the moral issues involved.

Raising the Maine.—The House of Representatives has passed the bill providing for the raising of the wreck of the battleship Maine in Havana harbor. This act would be commendable if it served no other purpose than removing a menace to navigation; but, when viewed as a token of respect to the American bluejackets who lost their lives in the destruction of the battleship, it is an act of belated justice. Naval officials say that sixty-seven bodies are buried in the wreck. It is a reproach to American patriotism that they should have been permitted to lie for twelve years in the slime of Havana harbor. Under the terms of the bill these bodies are to be brought to this country and buried with military honors in Arlington National Cemetery. The country, in whose service these men died, can in decency do no less than this.

Discrimination Against Uniformed Men.—The proposal of Representative Hobson that a law shall be enacted forbidding under penalty any discrimination in public places against the uniforms of the military services of the United States will meet with general approval. The uniform is a symbol of loyalty and of patriotic devotion, even to death. It is entitled to respect, next to the flag itself. It does not encourage its wearer to disorderly conduct, but rather restrains him. Its appearance is attractive. There is no reason why clean, sober, well-behaved men in the uniform of the Army or Navy of the United States should be excluded from public places while almost any person in civilian garb is freely admitted.

Rational Treatment of Crime and Vagrancy.—Two worthy bills, says the New York Evening Post, are now before the legislature of this state, each of which provides for a real need. Each is concerned with the criminal or defective classes, and takes a step in the wise direction of reducing crime rather by prevention than by cure. The first of these bills, "An Act to Establish a State Reformatory for Misdemeanants" between the ages of sixteen and twenty-one, is intended to supplement the beneficent service of the State Reformatory at Elmira, an institution which cannot itself care for this class of offenders, as the commission of a felony is necessary for admission there. Judges and others familiar with prison conditions agree that crime in boys and young men is fostered, rather than eradicated, by the influences to which they are exposed by the present system of commitment to the penitentiaries and county jails. No one can doubt that the close association with the hardened criminal or the naturally vicious prisoner, which is inevitable in such places, is calculated to result disastrously for the youth who has committed a misdemeanor, which, in the majority of cases, is his first offense against the law.

The second bill, "An Act to Establish a State Industrial Farm Colony for Tramps and Vagrants," seems to us equally wise, in view not only of the humanitarian aspect of the question, but also of the economic aspect, when it appears that, under the present lack of system, vagrancy costs the state of New York $2,000,000 a year. This bill provides for the establishment of a colony, which would be essentially a farm colony, administered after the pattern of those similar institutions abroad which have proved so signal a success. Here could be committed any vagrant over twenty-one years of age who was properly eligible in the opinion of a magistrate, and here he would receive educational and industrial training. Our duty toward human beings who may be saved from utter degradation, and the interest of the community in the rational treatment of crime and vagrancy, equally recommend the passage of these bills.

Biennial Legislative Sessions.—A concurrent resolution proposing a constitutional amendment providing for biennial sessions has been under consideration by the New York legislature. Of fifty states and territories with legislatures, one legislature meets quadrennially, forty-two meet bienially, and only seven meet annually,—these being the legislatures of Georgia, Massachusetts, New Jersey, New York, Porto Rico, Rhode Island, and South Carolina. The tendency in recent years has been strongly against annual meetings.

New York is the largest state in the Union. Its legislature has more important work to do than that of any other. During each session of the legislature about 3,000 bills are introduced, of which about 750 become laws. As a counsel of moderation, there seems some merit in the suggestion that before the state commits itself to the proposition of one legislature every two years it should demonstrate its ability to dispense with the two legislatures in one year, which is its present custom. In the last five years there have been not less than eight regular or extra sessions, and in the last three years not fewer than five. Nor does the multiplication of sessions wholly measure the present tendency. Anyone familiar with the statistics of the date of adjournment of recent legislatures will note the fact that by a rapid extension the day of dissolution has been pushed forward from early April to late May, or even June.

Doubtless the agitation for a biennial session is a logical reaction from known abuses. Not biennial or quadrennial, but even centennial, assemblages would, we suspect, satisfy the public in its present frame of mind, arising from recent disclosures concerning prior legislatures. But however attractive the project may be, its practicability may well be questioned.

Vicious Pension Legislation.— The pending pension measure which would give a pension to women who have married veterans of the Civil War since 1890 seeks to extend the bounty of the nation beyond all proper limits. As the

law now stands, every woman who married a veteran up to 1890 is entitled to a pension upon her husband's death, and this is a very liberal provision, for it enables a woman who married a soldier twenty-five years after the armies of the Union were disbanded, to obtain governmental support. The proposed measure would only encourage women of a certain type to marry aged veterans that they might take advantage of the pension scheme. It would not help the veterans, nor would it aid anyone to whom the nation is under obligation. The growing demand for pensions of every kind, civil and military, is a deplorable tendency of the times.

The Postal Savings Bank Bill.—The administration postal savings bank bill has passed in the Senate and it seems likely that it will become a law.

As it goes to the House the bill authorizes the various money order postoffices to accept sums of $1 or more from depositors, and to deposit these sums in the local banks, where the money is to remain unless withdrawn by the President in case of war or other exigency. In case of this withdrawal the funds are to be invested in government securities, but with the proviso that such securities shall not draw less than 2¼ per cent interest. The control of the funds is vested in a board of trustees composed of the Postmaster General, Secretary of the Treasury, and the Attorney General.

The aggregate balance allowed to any depositor is $500, and no person is permitted to deposit more than $100 in any one month.

The government is required to pay 2 per cent interest, and must exact not less than 2¼ per cent from the banks, the extra quarter of 1 per cent being required for the payment of expenses and losses.

It is estimated by the friends of the measure that the sum of $1,000,000,000 will soon find its way into the government treasury as a result of this measure. The argument that much money will be taken from the savings banks is answered with the statement that the bank deposits would not be affected, for the reason that the banks pay more interest than the government will pay, and that the money that will go to the government will come from old stockings, mattresses, and other places where it has been concealed by people who are afraid of the banks. The President states that he believes the proposed measure will assist the savings banks, and will encourage thrift in the nation. This is one of the measures that will have to develop its own future. No man can positively foretell what the effect of such a policy will be.

We sincerely and earnestly believe in peace; but if peace and justice conflict, we scorn the man who would not stand for justice though the whole world came in arms against him.—Ex-President Roosevelt.

In his lecture before the College of Sorbonne, Paris, April 23, 1910.

International Affairs

Respect for American Passports.—President Taft has instructed Mr. Rockhill, the American ambassador at St. Petersburg, to make strong representations to the Russian government looking to the inviolability of American passports in that country. Mr. Rockhill, it is stated, will take the matter up personally with the Russian Emperor, and endeavor to secure action that will give American citizens freedom from political arrests in Russia.

Ambassador to Austria-Hungary.—Richard C. Kerens, the newly appointed ambassador to Austria-Hungary, was born in Ireland in 1842, and came to America in his infancy. He was in the Union Army throughout the Civil War, and has for many years lived in St. Louis, where he has acquired large railroad interests.

Departure of Italian Ambassador.—Baron Edmondo Mayer des Planches, retiring Italian ambassador to the United States, has departed for his new post at Constantinople. "My feeling on leaving America is one of keenest regret," he said. The Baron had been ambassador to this country for eight years.

Arbitration of Claim against Venezuela.—Venezuela has designated August Beernaert, of Belgium, a member of The Hague Court, as the arbitrator on its behalf of the Orinoco's Steamship Company's case between Venezuela and the United States. This case grew out of the annulment, on the part of the Castro Government of Venezuela of the exclusive concession held by that company for the navigation of certain channels of the Orinoco river, which resulted in the destruction of the business of the company and the practical confiscation of its property.

New Spanish Minister.—Senor Don Juan Riano has been appointed Spanish minister to the United States, to succeed the Marquis of Villalobar, who has been transferred to the Spanish mission at Lisbon. Señor Riano is well known in this country. He was formerly stationed in Washington as secretary of the Spanish legation, but for some time past has been Spanish consul general at Copenhagen, Denmark.

Retirement of Minister to Japan.—The retirement from the diplomatic service of Thomas J. O'Brien, American minister to Japan, has been announced. It is Mr. O'Brien's intention to resume the practice of law in Jackson, Michigan. He is to be succeeded at his foreign post by Dr. Maurice Francis Egan, who has been American minister to Denmark.

Russian Bar Not for Women.—The minister of justice, to whom was referred the request of the Duma for the introduction of a law authorizing the admission to the bar of women lawyers, has declined to do this, finding that the profession is already overcrowded, that the education of women in Russia is not on a sufficiently high plane, and that this question can best be discussed in connection with the general subject of broadening the sphere of female activity, now awaiting determination. The Liberal members of the Duma will now introduce their own measure, using the parliamentary right of initiating legislation.

The question was raised by the recent appearance of Miss Fleischutz, whom the St. Petersburg Bar Association has accepted as a member, as attorney in a criminal case. The prosecuting attorney refused to proceed with the case, holding that women, under the Russian law, are not authorized to practise law, in which he was supported by the Imperial Senate.

Chinese Legislatures. — Twenty-one provincial elective legislatures have held sessions in China, and their manner of conducting proceedings has done much to inspire other nations with confidence in the ability of the Chinese people to take an intelligent and effective part in the government of the empire. On meeting they elected in each province a president, vice presidents, and a standing committee. They adopted rules resembling those of Western procedure,—reading a bill three times, for instance, before voting. The public was admitted to the sessions by ticket, and places were set apart for the reporters of the newspapers, in which the proceedings were published day by day. The assemblies all met on October 14th, and adjourned at the end of forty days, save in a few cases where the session lasted fifty days. The debates were characterized by moderation, and especially by the brevity and business-like nature of the speeches.

There was remarkably little friction between the assemblies and the government officials. Any efforts to debate imperial matters, which had been distinctly excluded from their jurisdiction in the decree creating the assemblies, were suppressed by the legislatures themselves and their own presiding officers. The matters which were discussed, and resolutions about which were forwarded to Pekin, were those relating to the welfare of the province and the local interests. Among these were the general demand for the suppression of the opium trade and the prohibition of poppy cultivation, calls for currency reform, for standard weights and measures, for taking the census, reclaiming waste lands, afforestation, dredging the rivers, extending railroads, suppressing gambling, prison reform, universal education, and so on.

The picture of twenty-one legislatures attending strictly to business, getting through their work in six weeks, and discussing subjects like the above, briefly and with moderation, is an alluring one. Perhaps it would be well worth while to send our own legislators and sociologists to China to learn from them.

The Berlin International Copyright Convention, 1908.—On the 13th of November, 1908, a revision of the Berne Copyright Convention of 1886, which, together with the additional Act of Paris of 1896, at present regulates the subject of international copyright among countries of the Copyright Union, was signed at Berlin by representatives of Great Britain, Germany, Belgium, Denmark, Spain, France, Italy, Japan, Liberia, Luxembourg, Monaco, Norway, Sweden, Switzerland, and Tunis. The United States declined to do more than express "general sympathy." The new Convention, which is designed to supersede the existing international arrangement, provides that authors who are subjects or citizens of any of the countries of the Union shall enjoy, for their works, in countries other than the country of origin, the rights granted by the respective laws to natives, as well as the rights specially granted by the Convention. The term of protection is the life of the author and fifty years after his death; but until this term is uniformly adopted by the respective countries the period of protection is that of the country where protection is claimed, and must not exceed the period fixed in the country of origin. Among the new features which have been introduced are to be noted provisions for the protection of works of architecture, phonographic reproductions, and cinematograph displays. The Convention must be ratified by July 1st, 1910, and brought into operation three months thereafter.—Weekly Notes.

Bar Associations

ALABAMA

Mobile has been named as the next meeting place of the Alabama State Bar Association. The time of holding the meeting has not been fixed, but will be decided after the Mobile Bar Association shall have decided the date it prefers. Probably some date in June or July will be selected.

CALIFORNIA

At the quarterly dinner of the San Francisco Bar Association, Hon. F. M. Angellotti, justice of the supreme court, spoke upon "Some of the Duties of the Legal Profession;" Hon. U. S. Webb, State Attorney General, discussed the topic of "Instructions to Juries;" Seth Mann, Esq., presented the subject of "The Railroad Commission of California." Judge Curtis H. Lindley, president of the Association, presided.

ILLINOIS

At the banquet held by the Illinois Lawyers Association in the Auditorium Hotel, Chicago, Daniel Cruise acted as toastmaster. Judge Orrin N. Carter, of the supreme court, spoke upon "Courts of Review;" Clarence S. Darrow discussed "Criminal Law;" Judge McKenzie Cleland responded to the topic, "The Uncertain Law;" Judge George A. Dupuy gave a brief talk on "The Common Law;" Judge Adelor J. Petit spoke in piace of Judge Lockwood Honore on "Responsibility of Lawyers for Legislation." Colonel J. Hamilton Lewis was to have spoken on "The Democracy of the Law," but was unable to be present.

The Knox County (Ill.) Bar banquet was held at Galesburg under the management of R. D. Robinson, the newly elected president of the Bar Association. Hon. M. J. Dougherty officiated as toastmaster. Hon. George W. Page of Peoria responded to the toast, "The Tendency of the Times towards Commission Government;" "The Lawyer's Future," was discussed by Guy B. Hardy; W. H. Clark, editor of the "Abingdon Argus," responded to the toast, "The Press, the Pulpit, and the Profession;" Charles Dickerson gave his "Reasons for Becoming a Lawyer." Mr. Dougherty had prepared a surprise in the form of a moot court, in which the law students acted as attorneys, and were very good in their impersonation of the legal lights. It was one of the most successful banquets that the Knox County Bar Association has held.

Members of the Warren County (Ill.) Bar Association entertained as guests Justice George A. Cooke, of the supreme court, Judge George W. Thompson, of Galesburg, Judge Rufus Robinson, of Oquawka, Judge Rice, county judge of Knox county, and former Judge Charles J. Schofield, of Carthage.

Robert J. Grier was introduced as toastmaster. Judge J. W. Clendenin spoke on the subject of "Legal Literature;" W. F. Graham was called upon to discuss the subject of "Law or Baseball;" Judge R. C. Rice, of Galesburg, spoke on the topic, "Why Is the Judiciary Nonpartisan?" Judge Charles J. Schofield responded to the toast, "The Legal Profession of To-day." Remarks by Judge George A. Cooke closed the program.

LOUISIANA

The Louisiana Bar Association Convention will be held at Baton Rouge on May 20th and 21st, 1910. The present appellate procedure and feasible changes will be made the subject of general debate and resolution. Charles A. Duchamp and Joseph F. Walton, of New Orleans, and T. Jones Cross, of Baton Rouge, are the committee on general arrangements.

MICHIGAN

The banquet of the members of the Jackson County (Mich.) Bar Association was an enjoyable affair. Ex-Prosecuting Attorney Benjamin Williams acted as toastmaster. Toasts were responded to as follows: "The Supremacy of the Law," Hon. Thomas E. Barkworth; "Our Duty to Each Other," Prosecuting Attorney Reece; "The Judiciary," Justice Charles A. Blair, of the Supreme Court; "The Town Lawyer," City Attorney John F. Henigan; "Our Clients," Richard Price. Remarks were made by Thomas A. Wilson.

At the annual banquet of the Montcalm County (Mich.) Bar Association Earl F. Phelps presided as toastmaster. The toasts responded to were: "The County Lawyer and His Opportunities," C. A. Lyons, Carson City; "Recent Legislation," L. C. Palmer, Stanton; "Disagreeable Duties of a Prosecuting Attorney," C. B. Reardon, Stanton; "Modern Practice," E. J. Bowman, Greenville; "Laws and Lawyers," S. E. Kennedy, Lakeview; "Reminiscences of the Montcalm Bar," N. O. Griswold, Greenville; "The Lawyer As He Ought to Be," Charles B. Reardon, Greenville, and "Another Charge," Hon. Frank D. M. Davis.

MISSOURI

At the regular April meeting of the Kansas City Bar Association on April 2d, Nathaniel T. Guernsey, of Des Moines, spoke on, "Do the Federal Extradition Statutes Include Corporations?" Henry A. Scandrett, of Topeka, also addressed the Association. A memorial service for the late Judge Lafayette Traber was also held.

The St. Louis Bar Association recently discussed the formation in St. Louis of a legal aid society, on the plan of those in New York, Boston, Chicago, and other large cities. The object is to aid those having legal troubles worthy of attention, but who are unable to raise adequate attorneys' fees. A committee will be appointed by the president to look into the question.

UTAH

The banquet of the Utah Bar Association, given at the University Club, Salt Lake City, on April 2d, was one of the intellectual treats of the year. Over 150 members and their guests assembled, and, after a royal repast, listened to a number of excellent addresses.

Charles Baldwin, president of the Association, introduced Judge Andrew Howat as the toastmaster. In the absence of Judge J. E. Booth, Parley L. Williams responded to the toast, "Looking Backward." "Looking Forward" was responded to by B. E. Rich. C. S. Patterson spoke upon the topic, "Does it Pay to Be a Lawyer?" John P. Gray, of Wallace, Idaho, made a few appropriate remarks on "Miscellaneous Business." The principal address of the evening was made by Joseph Chez, of Ogden, who responded to the toast, "Lawyers' Veracity."

VIRGINIA

Justice Lurton, of the United States Supreme Court, will address the joint meeting of the Virginia and Maryland Bar Associations at Hot Springs, Virginia, July 28th. About 500 attorneys from various parts of the Old Dominion and Maryland will be in attendance.

Law Schools

American Central Law School.

At a smoker and buffet luncheon at the Commercial Club, at which the American Central Law School and its students acted as hosts, the plan of having one great central law school in Indianapolis was discussed. The subject was presented by Clarence Bowen, an attorney of Indianapolis, who said that he believed if the various law colleges in Indianapolis and throughout the state would unite and form one big school it would not be long until it would rank with the highest institutions of the kind in the country. In the discussion that followed it was thought a school something on the order of the one at Ann Arbor could be established, providing the various institutions could get together. Indianapolis is favored for the location of the school because of its central position, and because of the advantages the students would have in the way of books and courts. In addition to the three schools in Indianapolis, other schools in the state are at Indiana University, Notre Dame, Valparaiso, Danville, and Angola.

At the meeting, students and members of the faculties of the three Indianapolis schools, to the number of about one hundred, were present. The consensus of opinion among those present was that the efforts of each law school of the state should be to seek to raise the standard of legal education, to advocate the inculcation of stricter professional ethics, and to indorse and urge the adoption of the proposed constitutional amendment regulating the admission to practise law.

All of the addresses were informal, with the exception of the one given by W. W. Thornton, who took for his subject, "The Profession." Others who spoke were: T. J. Moll, dean of the American Central College, and who acted as master of ceremonies; C. A. Slinger, George L. Alexander, Thomas Bradshaw, W. M. Fogarty, Roy Metzger, Charles E. Toon, Frank C. Starkey, L. L. Robinson, and Clarence Deupree.

Atlanta Law School.

The first annual banquet of the junior class of the Atlanta Law School was held at the Piedmont Hotel, all members of the class and a few invited guests being in attendance. The officers of the class are: Scott Chandler, president; E. Z. Arnold, vice president, and E. F. Bandy, secretary and treasurer. The committee arranging the program consisted of E. F. Bandy, William E. Arnaud, and E. Z. Arnold. William E. Arnaud was toastmaster.

The following toasts were responded to: "Why We're Here," Mr. E. F. Bandy; "Our School," Mr. Hamilton Douglas, dean; "Our Class," Mr. George Scott Chandler; "The Ladies," Mr. Paul Donehoo; "Equity as a Pastime," Mr. E. Marvin Underwood; "Hopes and Aspirations," Mr. J. P. Haunson; "How I Expect to Win My First Case," Mr. S. A. Nunn; "Thomas Jefferson, Lawyer," Hon. Hooper Alexander; "Legal Shortcomings of Blackstone," Mr. Lawton Riley; "The Faculty," Mr. C. R. Hiller.

Judge Joseph H. Lumpkin delivered the annual address to the law class. He talked on "Law as a Profession." After the address by Judge Lumpkin, and a few speeches by members of the class, the invited guests sat down to an excellently prepared banquet.

Columbia University.

It is announced that Professor John Bassett Moore, ex-assistant secretary of state, who has been absent because of ill-health for two years, will resume his courses at the university next fall. Professor Moore, who holds the Hamilton Fish professorship in international law and diplomacy, will give lectures in the schools of law and political science.

Cornell University College of Law.

Hon. William H. Hotchkiss, superintendent of insurance, New York state, formerly referee in bankruptcy, Buffalo, New York, delivered a course of ten lectures on "Bankruptcy Law and Procedure" before the senior law class of Cornell University College of Law during the month of March.

Creighton College of Law.

A complete collection of the pictures of the judges of the Supreme Court of the United States has been hung, recently, in the reading rooms of the Creighton College of Law. The picture are copies of famous paintings, and bear the autographs of the subjects.

The fifth annual commencement of the department will be held April 30th at the new Brandeis Theater. Hon. Martin J. Wade, former Congressman from Iowa, will deliver the address to the graduates, of whom there will be twenty-three, the largest class in the history of the institution.

The night school, which was established last September, has proved entirely satisfactory. The night course covers four years, and the entrance and graduation requirements, the books used, and the method of instruction are the same in the day and night courses.

Detroit College of Law.

The Oratorical Association of the Detroit College of Law is making arrangements for a debate with Ohio Northern University of Ada, Ohio, to be held in Detroit sometime in May. The association has accepted the challenge of Notre Dame, to debate upon the question, "Resolved, That Federal legislation should be enacted establishing a central bank in the United States," and has chosen the affirmative. This debate will also take place in May, in the lecture hall of the new Y. M. C. A. building in Detroit.

George Washington University Law School.

William Reynolds Vance, dean of the Law School of George Washington University, was the guest of honor at the fourth annual banquet of the law class of 1906. This class was the first to take up its work in the university under Professor Vance, and in addition to the banquet being an annual celebration, it was held also as a farewell dinner to the guest of honor, who leaves to take a place in the Yale University faculty at the close of the present school year.

There were twenty-eight members of the class present, each of whom delivered an impromptu speech at the call of Alvin G. Newmeyer, the toastmaster. Dean Vance talked on the subject of "The Responsibility of the Attorney to the Court."

Among those present were: Levi R. Alden, R. A. Blessing, Levi Cooke, Percy M. Cox, Victor G. Croisant, Allen G. Flowers, Edwin W. Fullam, Charles F. Fuller, Philip M. Garnett, Horace R. George, Lewis Hodges, Harry F. Lerche, Donald H. McLean, Alvin G. Newmeyer, Richard J. F. Quigley, John C. Sell, Arthur C. Shepherd, Paul Sleman, Walter A. Sommers, Frank Stetson, Edwin A. Swingle, Giles R. Taggart, Charles Doty Voorhis, William J. Wallis, F. W. Weitzel, Walter O. Woods, all of Washington; Lucien B. Christy, of Boston, and Charles A. Barnard, of Manchester, N. H.

The toastmaster read a letter from William H. Woodwell, of Carlsbad, New Mexico.

Howard University.

The second annual banquet of the class of 1911, Howard University Law Department, was held at Ellis Cafe. Toastmaster C. R. Richardson put everybody in good humor with his jolly address. As each speaker arose to respond to his toast he was greeted with a class yell or a verse from some of the university songs. Among those who spoke were: D. W. Bowles, "Our Alma Mater;" B. G. Clanton, "Law '11;" Wade H. Carter, "Reminiscences;" A. W. McEwen, "Esse Quam Videri;" A. B.

Thompson, "Our Duty as Lawyers;" James C. Waters, Jr., "Standards and Ideals;" Benjamin C. Jackson, "Our Wives and Sweethearts;" and Charles S. Williams, "The Future." Daniel R. Tomlinson contributed two West Indian songs.

The officers and members of the class are: C. Roscoe Richardson, president; Wade H. Carter, vice president; Van G. De Suze, secretary; Miss Jeanette Carter, treasurer; S. D. McCree, historian; T. B. Cobb, poet; Ulysses G. Banks, prophet; C. S. Williamson, orator; D. W. Bowles, B. G. Clanton, C. M. DeVeille, Artee Fleming, D. L. Garrett, B. C. Jackson, David Jenkins, Afue McDowell, Pedro Santana y Navedo, W. S. Porter, A. W. McEwen, Bryant Simpson, Aaron Smith, D. R. Tomlinson, A. B. Thompson, J. C. Waters, Jr., W. W. Washington, E. L. Winters, W. J. Green, E. L. Pinn, W. H. Robinson, and W. H. Whiting.

Indiana University Law School.

The Indiana University Law School has announced the following list of lecturers, with the subjects on which they will address the students of the law school during the month of May: May 2d, Sol. H. Esarey, Indianapolis, "Some Peculiarities of Appellate Procedure;" May 9th, Judge Cassius C. Hadley, Indianapolis, "Appellate Procedure;" May 16th, Judge Joseph H. Shea, Seymour, "Advice to Young Lawyers;" May 23d, Judge Allen Andrews, Hamilton, Ohio, "Some Requirements of a Good Lawyer;" May 30th, Sidney K. Ganiard, Lagrange, "From Moot Court to Real Court."

Kansas City School of Law.

Hon. Thomas H. Reynolds, president of the Kansas City Bar Association, will be the lecturer in the Kansas City School of Law upon the subjects of Bankruptcy and Fraudulent Conveyances. Mr. Reynolds is a member of the firm of Lathrop, Morrow, Fox, & Moore, and a specialist on the subject of bankruptcy.

New York University Law School.

The closing exercises of the women's law class of New York University were held recently. Eighteen candidates who had successfully completed the course of lectures and passed the final examination, were presented by Mrs. Eugenie Raye-Smith, and received their certificates from the chancellor of the university. The address of the evening was given by John Brooks Leavitt, on the subject, "The Judicial System in New York County." A short address was given by Dean Clarence D. Ashley, of the University Law School. At the close of the exercises, the prize scholarship and the new century essay prize were awarded. The prize scholarship, which is a gift of New York University valued at $250, in the form of two years' free tuition in the University Law School, is awarded each year to the student who has passed the best examination for the chancellor's certificate. The scholarship was awarded to Miss Edith Chapman, B. S., of Jamaica, N. Y., the first honorable mention being given to Miss Isabella McAllister, of New York city. The new century essay prize of $50, which is awarded each year to the member of the graduating class who has written the best essay on a stated subject, was awarded to Miss Frances McIver Thompson, A. B., of New York city. The subject of the essay was: "Suffrage rights now accorded to women in the state of New York, in connection with taxation and public education, and their exercise." The class of 1910 is the twentieth class graduated from this course.

Northwestern University Law School.

The honor system with student control has been in force at Northwestern University School of Law for ten years, and thus far the faculty has been called upon but once to discipline a student. Only one appeal has been taken from the house committee, and that was dismissed.

The requirements for graduation have been increased at Northwestern University Law School. Seventy-two hours of credit are now necessary, and sixty hours of this must be above grade "B."

The tuition fees have also been raised to $150 per year.

The close relations of the alumni and students of Northwestern University Law School are shown by the reception recently given to the senior class by Hon. Frank Loesch, president of the Chicago bar. Judge Schofield depicted the career of the host from an obscure beginning to an enviable position at the bar.

The generous gifts of Judge E. H. Gary, and the consequent increased use of the modern continental law sections of the library of Northwestern University, have made increased room necessary. A large assembly room on the second floor of the university building in the heart of the city will be used. This will double the floor space and greatly increase facilities.

University of Michigan.

At the last meeting of the regents of the University of Michigan, the requirements for entrance to the law department were raised. The new rule requires that all students entering in the fall of 1912 shall have had at least one year of college work. This will probably be raised to two years in the near future.

Professor E. C. Goddard, secretary of the law department, does not believe that the change will mark a great decrease in the number of students. He has figured that of the freshmen class entering last fall more than 60 per cent could have satisfied the one-year requirement. There were 781 students enrolled in the department of law during the year 1908-09.

Professor Henry M. Bates Tappan, professor of law in the University of Michigan, has resigned to join a law firm which is to be established in Detroit.

University of North Carolina.

Lucius Polk McGehee, a lawyer of New York, has succeeded the late Judge James C. MacRae, who for ten years was dean of the Law School of the University of North Carolina. Mr. McGehee, an alumnus of the university, is one of the editors of the "American and English Encyclopædia of Law," and author of "Due Process of Law."

University of Pennsylvania.

A novel contest in public speaking was arranged for students in the Law School of the University of Pennsylvania. The number of contestants was limited to ten, each of whom was to speak on one of the following subjects: Crimes, tort, equity, quasi contracts, evidence, carriers, contracts, property, associations, and constitutional law. Each general subject was divided into five subdivisions, such as torts: deceit, assault, nuisance, slander, and libel. Each contestant was required to familiarize himself with one general subject, but did not know upon which subdivision he would be asked to speak until he arose. Prizes for the contest were provided by the Alumni Association of the Law School.

Washburn Law School.

The faculty, alumni, and students of the Washburn Law School held an enthusiastic meeting at the Commercial Club Saturday, March 26th. After the luncheon an hour was spent in discussing the future of the school. Dean Wm. R. Arthur introduced the speakers. Judge A. W. Dana spoke for the Shawnee county bar; Professor Slonecker for the faculty; Attorney Greenwood for the trustees; C. W. Payne for the students, and Lew. Graham, Kansas supreme court reporter, for the alumni.

Wesleyan Law School.

Mr. P. H. O'Donnell, of Chicago, has accepted the invitation extended to him to deliver the commencement address on the occasion of the graduating exercises of the Wesleyan Law School. Mr. O'Donnell has the reputation of being one of the most eloquent orators in the state.

The commencement exercises of the law school will be held at the college on the evening of June 14th.

New Law Books

"The Corporation Manual." Sixteenth Edition. Edited by John S. Parker. (Corporation Manual Co., 34 Nassau Street, New York.)

This edition of the Corporation Manual contains the statutory corporation law of all the states in available form. The matter for each of the states has been completely rewritten and separately grouped under a uniform classification, enabling the lawyer to readily compare the similar statutory provisions of the different jurisdictions. Wherever practicable, the full text of the statutory provision is given under the appropriate heading of the classification.

A selection of corporation forms and precedents suitable for use in the various states is included in the volume. This work, although primarily intended for practical use by lawyers, will also be found of value to all those who are interested as legislators or publicists in the study of modern industrial conditions.

"The Principles of Argument." By Edwin Bell, LL.B. Cloth, $3.25.

The aim of this treatise is to facilitate the processes of thinking which are subservient to argumentation; to enable students readily to detect and expose fallacies; to simplify logical theory, and make it available for practical application in making and attacking arguments. The work is designed not only for students in schools and colleges as an educational discipline and a guide for the practice of debate, but also and especially for young men who have left school; for law students, lawyers, journalists, and others who are daily engaged in the practice of argumentation.

The book is ably and entertainingly written. The chapter treating of "Arguments from Authority," and the sections upon "Arguments from Testimony," "Arguments from Circumstantial Evidence," and "Disproof of Principles Derived from Authority," are of special interest to every member of the legal profession.

"A Treatise on International Law." By W. E. Hall. 6th English ed., by J. B. Atlay. Cloth, $6.

"The Constitution and Its Framers." By Nannie McCormick Coleman. 2d ed. $5.

"English Poor Law Policies." By Sidney and Beatrice Webb. Cloth, $2.50.

"Texas Municipal Corporation Laws, Annotated." By Judge J. T. Sluder. Buckram, $5.50.

"The Legislation of the British Empire, 1898 to 1907." Edited by C. E. A. Bedwell. 4 vols. Cloth, $12.

"The Corporation Law of the District of Columbia, Annotated." With Index by Frederick S. Tyler. $.75.

"1910 Supplement to Sayles' Civil Statutes of Texas." $4.

"1910 Annotations to the General Laws of Rhode Island, Revision of 1909." By John A. Tillinghast. $1.

"Kansas General Statutes, 1909." By C. F. W. Dassler. In 1 vol., buckram, $6. In 2 vols., buckram, $8.

"Supplement No. 2 to Dassler's Digest of Kansas Supreme Court Reports." Ready May 1st. Buckram, $5.

"Advance Sheets of Kentucky Court of Appeals Reports." To be issued weekly. $3 per year, beginning September 20, 1910.

Recent Articles in Law Journals and Reviews

Agency

"The Implied Authority of Agents."—30 Canadian Law Times, 243.

Ames, James Barr

"His Life and Character."—23 Harvard Law Review, 325.

"His Services to Legal Education."—23 Harvard Law Review, 330.

"His Personal Influence."—23 Harvard Law Review, 336, 10 Columbia Law Review, 185.

Assumpsit

"Recovery of Money Paid in Mistake."—30 Canadian Law Times, 252.

Attorneys

"Compelling an Attorney to Disclose His Client's Address."—20 Bench and Bar, 99.

Banks

"A Plan for a Central Bank."—27 Banking Law Journal, 119.

"Laws for the Guaranty of Bank Deposits."—70 Central Law Journal, 241.

Bar Associations

"The Thirty-third Annual Meeting of the New York State Bar Association."—22 Green Bag, 173, 16 Case and Comment, 241.

Bills and Notes

"The Negotiable Instruments Law."—27 Banking Law Journal, 127.

Carriers

"Power to Regulate Transportation Charges by Statutory Enactment."—13 Law Notes, 227.

"The Judicial Test of a Reasonable Railroad Rate and Its Relation to a Federal Valuation of Railway Property."—8 Michigan Law Review, 445.

Conflict of Laws

"The Renvoi Theory and the Application of Foreign Law."—10 Columbia Law Review, 190.

Constitutional Law

"Constitutional Limitations and Labor Legislation."—4 Illinois Law Review, 609.

"The Article in the Constitution of Illinois on the Distribution of Powers."—4 Illinois Law Review, 624.

"The Historical Interpretation of 'Freedom of Speech and of the Press.'"—70 Central Law Journal, 201, 223.

Contracts

"Implied Agreements Expressly Negatived."—30 Canadian Law Times, 239.

Corporations

"Is the Federal Corporation Tax an Interference with the Sovereignty of the States?"—23 Harvard Law Review, 380.

"Is the Federal Corporation Tax Constitutional?"—22 Green Bag, 168.

"Pooling Agreements among Stockholders."—19 Yale Law Journal, 345.

Courts

"A Comparative Study of English and American Courts."—4 Illinois Law Review, 552.

"The Proposed High Court of Nations."—46 Canada Law Journal, 153.

Criminal Law

"French Criminal Procedure."—19 Yale Law Journal, 326.

"Necessity for Prior Valid Marriage in Prosecution for Bigamy."—15 Virginia Law Register, 905.

"Preventive Detention; Recent Decisions as to."—74 Justice of the Peace, 123, 134.

"Probation—the Probation Officer."—74 Justice of the Peace, 98.

"Probation—the Probation Officer's Duties."—74 Justice of the Peace, 135.

"The Powers and Duties of a Chairman of Quarter Sessions."—74 Justice of the Peace, 110.

Eminent Domain

"Compensation for Minerals."—42 Chicago Legal News, 259.

"Condemnation Proceedings for Mining Purposes."—70 Central Law Journal, 167.

Ingersolls, The
"Sketch of Jared and Charles Jared Ingersoll."—16 Case and Comment, 311.

Innkeepers
"The Inherent Limitation of the Public Service Duty to Particular Classes."—23 Harvard Law Review, 339.

International Law
"Summary Execution of Foreign Insurgents."—16 Case and Comment, 221.

Interstate Commerce
"Inadequacy of the Present Federal Statute Regulating Interstate Rendition."—10 Columbia Law Review, 208.
"The Right to Engage in Interstate and Foreign Commerce as an Individual or as a Corporation."—8 Michigan Law Review, 458.

Kent, James
"Sketch of."—16 Case and Comment, 259.

Landlord and Tenant
"Workmen's Dwellings and Implied Covenants."—74 Justice of the Peace, 121.

Legal Ethics
"To Uphold the Honor of the Profession of Law."—19 Yale Law Journal, 341.

Legal Profession
"Patriotism and the Profession."—19 Yale Law Journal, 319.

Limitation of Actions
"Foreign Claims."—40 National Corporation Reporter, 225.

Master and Servant
"Sufficiency of Notice under the Employers' Liability Act."—20 Bench and Bar, 104.

Monopolies
"The Adequacy of Remedies against Monopoly under State Law."—19 Yale Law Journal, 356.
"The Federal Anti-trust Act."—23 Harvard Law Review, 353.

Mortgages
"Strict Foreclosure in Illinois."—4 Illinois Law Review, 572.

Philippines
"Law in the Philippines."—16 Case and Comment, 318.

Poor Laws
"The Right to Live."—16 Case and Comment, 217.

Postoffice
"Local Authorities and Postal Facilities."—74 Justice of the Peace, 147.

Privacy
"What Invasions of Privacy are Unlawful."—16 Case and Comment, 315.

Shelley's Case
"The Rule in Shelley's Case Does Not Apply to Personal Property."—4 Illinois Law Review, 639.

Story, Joseph
"Sketch of."—16 Case and Comment, 213.

Subrogation
"The Equitable Right of Subrogation."—30 Canadian Law Times, 247.

Taney, Roger Brooke
"Chief Justice Taney."—22 Green Bag, 149.

Taxation
"A Statutory Relation between Insurable and Taxable Values."—15 Virginia Law Register, 914.
"Right of City to Tax Public Property."—16 Case and Comment, 322.

Torts
"The Influence of Social and Economic Ideals on the Law of Malicious Torts."—8 Michigan Law Review, 468.

Uniformity of Laws
"Swift v. Tyson; Uniformity of Judge-made State Law in State and Federal Courts."—4 Illinois Law Review, 533.

Waters
"Legal Rights in New York Water Power."—16 Case and Comment, 270.
"Public Rights in New York Water Power."—16 Case and Comment, 264.
"The Underlying Principles Governing Riparian Water Rights and Diversion Suits."—24 Journal of New England Water Works Association, 187.
"Water Supply for Domestic Purposes."—74 Justice of the Peace, 145.

Quaint and Curious

We shall esteem it a favor if our readers will send us any odd or amusing incidents of a legal nature that may come to their attention.

Soothing the Savage Court.—A young woman lawyer who won her first case in Brooklyn the other day, in speaking of the law, said: "It's simply great. Before I took it up I was a professional violinist, but I scarcely play at all now. The law gives me no time. Yet, sometimes, I wish I could take my violin into court and play a little Mendelssohn music to the judge before arguing a case. It would act soothingly. Some day perhaps I'll try it."

The idea is not a bad one. Men have won wives and public office by their skill on the violin. Why shouldn't they win lawsuits in the same way?

An Impotrant Person.—Is a baby a month old a person? A London magistrate has grasped the issue, and judicially decided it. A cab driver asserted that an infant carried in a nurse's arms was an additional "person," and charged the father of the family accordingly, and when the matter went into court the judge took the driver's side. Of course, in all properly constituted families a baby is actually the most important member. But would not such a dignified mortal, of his or her own option, object to being called a "person?" It would seem that "royal highness" would be the very lowest title to satisfy the infant ruler of the household.

Right to Join in Hymn.—A colored member of a church in Indiana was so moved by the way in which a trio rendered a hymn that he could not resist the impulse to "jine in on the chorus." His volunteer services were not appreciated, and he was arrested on a charge of disturbing the meeting. A jury in the Gibson circuit court decided that "joining in the singing of a hymn" does not necessarily disturb a religious meeting, and acquitted the accused.

A Life Sentence.—If the sentence imposed upon him by Judge Ralph S. Latshaw, of the criminal court of Kansas City, Missouri, is carried out, Fred M. Miller, an attorney of that city, will have to wed the first woman who will consent to become his wife.

Miller recently filed an application in the court, in which he represented himself as a "lonely single man inspired with the lofty ambition to take unto himself a wife," and soliciting the aid of the court to this end.

"Here is a man who desires to prefer against himself in the criminal court a charge of wanting to get married," said Judge Latshaw when Miller's application was read. "File the application, Mr. Clerk. Enter a plea of guilty after his name, and sentence him to be married to the first woman who will consent to become his wife."

Miller specified that his wife must be well bred, modest, and willing to aspire to reach the "highest plane in life and the most lofty limit in thought."

Weighed in the Balance.—Legal learning is worth just $100 a pound in San Francisco, according to a decision alleged to have been rendered in the superior court in settling the amount that should be awarded for legal services to an attorney who had won a suit brought to recover damages for negligent injuries.

After argument the court said: "Bailiff, take the papers of this wise man of the law outside, and have them weighed. We shall allow him an even hundred dollars a pound for his legal learning."

The bailiff reported the papers weighed two pounds and a half.

"So be it," said the judge, "The learned counsellor is entitled to $250. Call the next case."

The decision, it is reported, will be appealed.

The Unreliability of Direct Testimony.—Nothing could give better evidence of the unreliability of eyewitnesses, says the San Francisco Examiner, than the experiment recently tried by Professor McKeever, of the Kansas State Agricultural College, before a class in psychology. He trained three young men to effect a "holdup" while he was delivering a lecture, carefully rehearsing every word they were to say. In the midst of his lecture, in rushed Jones, pointing a wrench at his pursuers, Smith and White, and shouting "Stop or I'll shoot!" He then dropped to his knees, letting fall a small bag, and, rising, dashed from the room. At his heels followed the other two students, wildly calling on him to give up the bag, while White aimed at the fugitive a revolver from which the cylinder had been removed. The séance required only a few seconds, and Professor McKeever at once explained his experiment to the frightened class, and asked each member to write an account of what had happened.

If Smith had been on trial it would have gone hard with him, for many declared that he snapped his revolver at Jones several times, whereas he had nothing in his hands whatever. White, the student who was really armed, was scarcely noticed, not one of the answers crediting him with carrying the revolver. As widely divergent were the statements concerning the personal appearance of the "holdup" men and the words they said.

From which it will be seen how dangerous it is to rely on the human eye and the human mind when in a state of excitement.

Rhetorical Gems from the Be h.—Dent, J., in Griffith v. Blackwater Boom & Lumber Co. 46 W. Va. 56, was the author of the following rhetorical gem: "At the time the alleged breach occurred, the company had ceased to exist, save only in name, and its bones were already bleaching on the plains of corporate existence, amid millions of their kind." And in the same opinion he referred to the appellants as having assigned "the usual number of technical or shot-gun reasons" against the decrees.

Applauded Himself.—Another instance of a judge throwing himself a bouquet occurred in Blakeley v. Patrick, 67 N. C. 40, in which Pearson, Ch. J., handsomely says of the opinion of Pearson, J., in the previous case of Waldo v. Belcher, 33 N. C. 609, that it "is sustained by the reason of the thing and by the authorities cited." It is interesting to note that the opinion thus admiringly mentioned is in direct and irreconcilable conflict with that of Comstock, J., for the New York court of appeals, in Kimberly v. Patchin, 19 N. Y. 330, upon the identical question decided.

An Undesirable Appointment.—A correspondent of a local paper, in giving a list of wills recently admitted to probate, adds in each instance the name of a person said to have been appointed "testator" or "testatrix," of the will. An appointment to the position of testator or testatrix of a probated will would be about as welcome to most people as a Black Hand communication.

Elephant's Right of Action.—The headnote to Gregory v. Adams, 80 Mass. 242, informs us that "a town is liable for an injury occasioned by a defect in a highway which the town is bound to repair, to an elephant driven over it with due care." This novel proposition is not, however, sustained by the facts, which disclose an action of tort brought by the owner of the animal to recover damages for its injury and loss.

Offered Plaintiff's Face in Evidence.—A motion recently filed in a Georgia superior court to dismiss a bill to enjoin defendant from further executing a dispossessory warrant contains the following unusual averment: That as a further crime against the peace and dignity of the laws of the state, and in order that he might be able to defeat defendant from exposing the violation of law on the part of plaintiff, plaintiff issues a criminal warrant against defendant causing him to be confined in the county jail, and put to unnecessary expenses, when plaintiff knew at the same time that defendant had violated no law whatever, as the face of plaintiff itself will show.

Lawyers on Strike.—A strike of lawyers has afforded the people of Athens, says the Pall Mall Gazette, some relief from high politics, which is the ordinary topic of conversation of great and small. Cabmen, waiters, and the little shoeblacks from Megalopolis, when not engaged in their vocations, are invariably deep in a newspaper reflecting the opinions of party to which the reader adheres. That accounts in some measure for the fact that a town of 167,000 inhabitants manages to support ten, or it may be twelve, daily papers.

These industrials have a good deal of leisure. But the members of the Athenian bar have more. It is said that if the aggregate earnings of barristers in England were equally divided, the income accruing to each would not be very great. But in Athens it could hardly be represented in currency. The proportion of lawyers to the laity is enormous. If the latter were all to engage in litigation they would scarcely provide the former with full employment.

The resources of journalism and political party work are utterly inadequate to fill the vacuum, and the situation leads to extraordinary developments. Tram tickets are not infrequently punched by gentlemen learned in the law.

The worst of it is that in this most democratic land, where social distinctions hardly exist, the thing is accepted as a commonplace occurrence. Elsewhere it would bring notoriety, and it might possibly mean work. However, the lawyers of Athens are on strike, and some of the courts have suspended their sittings. Though how a strike is going to better the situation is not at all clear, as the supply so greatly exceeds the demand, fewer lawyers is the only remedy. The bar cannot force the rest of the world to go to law.

A similar condition of affairs, according to the Law Times, prevails at Potenza, where a general strike of the solicitors and barristers has been declared, and all legal business is at a standstill. This important center in Lower Italy used to be especially favored with lawsuits and criminal trials, which it had been found necessary to transfer from their normal place of hearing on the ground of prejudicial environment. This lucrative influx of litigation has almost ceased of late, and the unemployed lawyers of the locality, who are legion, attribute the change to the cramped, filthy, and unsanitary conditions of the city and law courts, and the incorrigible laziness of the staff.

"Casey at the Bat."—When DeWolf Hopper visited Galesburg, Illinois, some of the practical jokers and wits of the town, among whom was Attorney W. C. Frank, brought to the attention of Judge R. C. Rice, while not on the bench, a bill alleging their fears that Mrs. Hopper would prevent her husband from reciting "Casey at the Bat," and invoked the protection of the court on his behalf. The decree, which was granted extra-judicially, after premising that, since the presidency of James Monroe, DeWolf Hopper had recited "Casey at the Bat" to the edification of the public and the discomfort of his wife, restrained the latter from frightening or molesting him during the rendition of such selection in Galesburg. A license authorizing the recitation was appended to the decree. These formidable papers were presented to Mr. Hopper's manager, and constitute a unique testimonial of the undying popularity of "Casey at the Bat."

The Legal Fountain of Youth.—News from Gloucester, Ohio, that a man seventy-three years young has just filed a certificate that he has begun the study of law preparatory to admission to the bar. A similar report comes from Macon, Georgia, where a magistrate, seventy years of age, has recently taken up a three years' course of legal study. These gentlemen have chosen wisely. There is nothing so rejuvenating as legal pursuits, nor does any class of professional men labor longer or live to a greater age than our jurists. Many judges leave the bench at seventy, only to return to the bar. But recently in England, Lord Halsbury, at the age of eighty-five, temporarily returned to the bench as a matter of accommodation. The failure of an industrious and devoted lawyer to reach the century mark really seems to be without excuse.

Judges and Lawyers

The Man Who Conducted New York's Fire Insurance Investigation

Hon William Horace Hotchkiss was born at Whitehall, Washington County, N. Y., Sept. 7th, 1864. He graduated from Hamilton College in 1886, and was admitted to the bar in 1888. For the next two years he practised law at Auburn, N. Y., as a member of the firm of Teller & Hotchkiss.

HON. WILLIAM HORACE HOTCHKISS

In 1890 he removed to Buffalo, where he has been associated with the firms of Parker & Hotchkiss; Parker, Hotchkiss, Miller, & Templeton; Hotchkiss & Templeton; and (now) of Hotchkiss & Bush. He is a member of the American Bar Association, and president of the Erie County Bar Association.

Mr. Hotchkiss has been referee in bankruptcy for Erie county since 1898. He prepared the fourth edition of Collier on Bankruptcy, and has lectured on this branch of the law before the Buffalo and Cornell Law Schools.

The subject of primary reform has for some time interested Mr. Hotchkiss, who assisted in drafting the present New York primary law. He has participated in efforts to secure desirable amendments to the bankruptcy law, and helped draft the amendatory bill of 1903, as well as the bill brought before the Sixtieth Congress.

Mr. Hotchkiss has been president of the New York State Automobile Association, and has taken an active part in movements to procure the better regulation of automobiles while on public highways. He aided in drafting the New York motor vehicle law of 1904.

In February, 1909, he was appointed superintendent of insurance for the state of New York. He has been brought prominently before the public of late by the able and efficient manner in which he conducted the fire insurance investigation. He has brought to light the existence of a large corruption fund, which was used for the purpose of procuring or thwarting insurance legislation. He is fearlessly following every lead developed in the investigation, irrespective of who is hit or

what party is injured by the disclosures. His impartiality, sincerity, and integrity are making a splendid impression upon the public, and it is quite possible that other and higher honors await him.

Judge John B. Redman, deputy commissioner of internal revenue under President Cleveland's first administration, and for some years a member of the board of pension appeals of the Interior Department, was stricken with heart trouble at Ellsworth, Maine, several days ago, and died shortly thereafter. He was regarded as one of the leading lawyers in Maine, and at the time of his death was filling his second appointment as municipal judge of Ellsworth. In 1884 Judge Redman was the Democratic candidate for governor of Maine. He was sixty-two years of age.

Rufus Isaacs, the most brilliant counsel and most eloquent pleader in England, has just been appointed solicitor general. According to custom, he will be knighted within a few days, in recognition of his achievement. For several years Mr. Isaacs has been making an income of $100,000 per annum. He started life in the mercantile marines, but soon tired of the sea. Later, he went into business, and then studied law, and was admitted to the bar. It is said he contemplates upsetting tradition by declining knighthood, because of the fact that the honor has become too common.

Ex-Judge T. S. Howell dropped dead at Gulfport, Mississippi, while presenting his argument in a case before the United States commissioner. Death was due to heart trouble. He was a native of Hannibal, Missouri, and was for several years judge of the probate court at Ellisville, Mississippi.

Daniel Noyes, for eighteen years judge of the thirty-second Indiana circuit, died March 14th, after an extended illness. He was born in Poultney, Vermont, in 1830. He served two terms as mayor of Laporte, where he has lived since 1852. In 1893 he was grand master of the Masonic Grand Lodge of Indiana.

Arizona's Attorney General

HON. JOHN B. WRIGHT

Hon. John B. Wright was born in Denver, Colorado, on January 29th, 1872. His father, C. W. Wright, was a practising attorney in Denver for many years, and was the first attorney general of the state of Colorado. It is an interesting coincidence that father and son should have attained to similar positions.

The subject of this sketch graduated from the Law Department of the University of Michigan in June, 1894, since which time he has been constantly engaged in the practice of law in Arizona. In 1897 and 1898 he served, by virtue of election, as district attorney of Yuma county. In 1903–05 he filled the position of city attorney of Tucson, Arizona. He was appointed to his present office on May 3d, 1909. He has always been a Republican in politics, and has been a delegate to many city, county, and territorial conventions.

On October 12th, 1897, he married a daughter of C. D. McPhee, of the firm of McPhee & McGinnity, of Denver, Colorado. Mr. and Mrs. Wright have a charming family of four children, the oldest being a boy about ten years of age.

Mr. Wright has a splendid law library of upwards of twenty-five hundred volumes, carefully selected from a practical standpoint. He has specialized in mining and corporation law, and is recognized as an expert in this branch of the profession.

Attorney General Wright is an upright and courageous officer. The interests of the territory will be well safeguarded under his administration.

William S. Barnes, district attorney of San Francisco from 1891 to 1899, passed away at his home, at Salada Beach, Cali-

fornia, after a week's illness following a stroke of apoplexy. Mr. Barnes, during his incumbency of the office of district attorney, made a most enviable record, and when he tried the celebrated Durant case achieved an almost world-wide reputation as an able and fearless prosecutor. In later years Mr. Barnes devoted himself to private practice.

Simeon P. Armstrong, who recently died in Los Angeles, where he had gone in search of health, was regarded as the wit of the Chicago bar. Shortly before leaving for California, and when his mortal malady had nearly conquered him, a friend called to see him, and greatly amused the sick man by his peculiar methods of consolation. "That man spent most of the afternoon with me," said Armstrong, his eyes bright and glancing with amusement; "and he nearly killed me. He came to cheer me up, I suppose. He took up my symptoms one by one. I said this seemed to be the matter with me, and he replied, 'yes, yes, very bad, very bad, I have known a good many cases just like that, but they didn't last long.' We kept on like this, and then he got the afternoon paper, and we went over the death notices, and he pointed out how this man was just about my age, and that man seemed to have died of about the same complaint I had, and there was I lying there, without being able to laugh. My sides ache yet, it was such a funny idea of making the time pass easy for a sick friend."

Judge George R. Scott, aged eighty-nine years, for twenty years a member of the Texas court of criminal appeals, died recently in San Antonio, Texas. Judge Scott was a native of Illinois. He came to Texas when thirty years of age, and served under General Zachary Taylor throughout the Mexican War. His home was in Austin during the twenty years he occupied the supreme bench. Following his retirement from the bench he moved to Taylor, where he practised law until he removed to San Antonio with his daughter, five or six years ago. Judge Scott was an early personal friend of Abraham Lincoln.

West Virginia's Attorney General

HON. WILLIAM G. CONLEY

Hon. William G. Conley was born of Scotch-Irish parentage at Kingwood, Preston county, West Virginia, on January 8th, 1866. He was raised on a farm, where he grew to sturdy manhood. At the age of eighteen he secured work on the construction of the West Virginia Central & Pittsburg railroad. He taught school the following winter and during several seasons thereafter. In the spring of 1891 he was elected superintendent of free schools of his native county.

Mr. Conley was educated in the public schools of the state, and in the West Virginia University, from which he graduated in 1893 with the degree of LL.B. After his admission to the bar he began the practice of law at Parsons, West Virginia, in the fall of 1893, at which place he continued in general practice until he removed, in the spring of 1903, to Kingwood, where he now resides.

He has always taken an active part in politics, and has contributed largely of his time, energy, and means to the success of the Republican party. He was one of the founders of the Parsons Advocate, and its editor for a number of years. He served as councilman and mayor, and was elected prosecuting attorney for Tucker county in 1896, and re-elected in 1900 by the largest majority ever given a Republican in that county.

Mr. Conley is a member of the Presbyterian Church. He is also prominently identified with the I. O. O. F., the K. of P., the A. F. & A. M., the chapter, the commandery, and shrine.

On May 9th, 1908, Governor William M. O. Dawson appointed him, without solicitation on his part, to be attorney

general of West Virginia, to succeed the late Clark W. May. This appointment was a graceful recognition of Mr. Conley's especial qualifications for handling the Virginia debt case. In the fall of 1908 he was elected to succeed himself by a majority far in excess of that received by any other candidate on the ticket.

He is being strongly urged by the Republicans of the second congressional district of his state to become a candidate for Congress this year, but he has declined. The press of the state has also mentioned him as a probable candidate for governor two years hence.

Among the important suits conducted by Attorney General Conley may be mentioned the King land case, in which a decision favorable to West Virginia was handed down by the Supreme Court of the United States on January 31, 1910; and the Maryland-West Virginia boundary case, also decided favorably to West Virginia by the same court on February 21, 1910. Another noted case was that of the Coal & Coke Railway Company v. The Attorney General and Others, in which the railway company sought to have the two-cent passenger rate law declared unconstitutional, and to enjoin him from enforcing the same. The court held the law constitutional.

Mr. Conley has shown himself to be a prompt, courteous, and efficient public officer. The state of West Virginia is to be congratulated upon having so able and fearless an attorney general to protect her rights.

Judge William Moore Beckner died March 14th, at his home, in Winchester, Kentucky, of a complication of diseases, at the age of sixty-nine years. He came to Winchester when a young man, and engaged in the practice of law. He entered politics, and was soon a leader in the Democratic party. He was successively police judge, county judge, member of the legislature, member of the constitutional convention, railroad commissioner, prison commissioner, and member of Congress. In 1896 he left the Democratic party on the silver issue, and a few years later was candidate for attorney general on the Republican state ticket.

Ex-Judge George H. Williams, who was the last survivor of President Grant's cabinet, died at Portland, Oregon, on April 4th, at the age of eighty-seven years. From 1847 to 1852 he was judge of the first judicial district of Iowa, and from 1853 to 1857 chief justice of Oregon territory. While United States Senator, he was a member of the Joint High Commission, which in 1871 prepared the treaty of Washington as an adjustment of the "Alabama Claims." He was United States Senator from Oregon from December 4, 1865, to March 3, 1871. Judge Williams was Attorney General in the cabinet of President Grant in his second term, and was nominated in 1873 by Grant for chief justice of the United States Supreme Court; but the nomination was not confirmed, and his name was withdrawn.

John Gilbert McNutt, member of the law firm of McNutt, McNutt, & Wallace, died recently at Los Angeles, California, where he had gone two years ago to recuperate his health.

Mr. McNutt read law in the office of his father, along with Samuel R. Hamill, and later he and Mr. Hamill formed a law partnership under the firm name of McNutt & Hamill, which was dissolved when he became associated with his father in the law business under the name of McNutt & McNutt.

The only public office Mr. McNutt ever held was that of deputy United States district attorney, in 1887, under John E. Lamb, then United States district attorney. When Mr. Lamb resigned to run for Congress, Mr. McNutt remained in Indianapolis for a time, being associated with former United States Senator David Turpie. He was nominated for attorney general of Indiana in 1896, and again in 1898, but suffered defeat with his party.

Robert Vinton Belt, at one time chief of the Indian division in the office of the Secretary of the Interior, and later Assistant Commissioner of Indian Affairs, died in Washington recently at the age of sixty-eight. At the time of his death Mr. Belt was in private law practice.

Six hundred members of the Cook county (Ill.) bar, gathered in the large banquet hall of the Hotel La Salle to pay their respects to Judge Willard M. McEwen, who voluntarily retired from the bench after seven years of service in the superior court of Cook county.

"In the exercise of my rights as an American citizen," Judge McEwen said in explaining his relinquishment of the place, "guaranteed to me in the Declaration of Independence, I leave the bench in pursuit of happiness."

An elaborate menu preceded the program of toasts, and Nelson N. Lampert, the chairman, presented State's Attorney John E. W. Wayman as toastmaster. In a witty response, acknowledging his opportunities and responsibilities in such a position, Mr. Wayman took occasion to pay his respects to both bench and bar, and to pay a high tribute to Judge McEwen.

Judge Marcus Kavanagh, representing the superior court, added his meed of appreciation to one whom he characterized as "an upright jurist, an able lawyer, and an honest man." Judge Charles S. Cutting, of the probate court, Judge Frederick L. Fake, Jr., of the municipal court, and Edward D. Shurtleff, speaker of the last house of representatives of Illinois, spoke for their respective branches, citing numerous instances of Judge McEwen's firm grasp of the law, and expressing sincere regret at the loss of so distinguished a jurist.

When Judge McEwen arose to respond to the welcome tendered him, he was given an ovation lasting many minutes.

At the close of Judge McEwen's remarks, Senator William Lorimer was called on for a speech, and responded briefly, praising the character of the guest of the evening, and laying particular stress on his loyalty to his friends and his high standing as a jurist.

Miss Frances Wolf, of Memphis, recently appeared before the court of civil appeals at Jackson, Tennessee, and argued a case from the Memphis chancery docket. As far as is known, Miss Wolf is the first women lawyer to appear before a court in Jackson.

Missouri's Attorney General

HON. ELLIOTT W. MAJOR

Hon. Elliott W. Major was born in Lincoln county, Missouri, October 20th, 1864. He was educated in the public schools and at Watson Seminary, and studied law in the office of Hon. Champ Clark, present leader of the minority in Congress. He was admitted to the bar on attaining majority and formed a copartnership with Mr. Clark in Frankford, Missouri.

When but fourteen years of age he had declared that he intended to become a lawyer, and represent his home district in the state senate, and ultimately become attorney general of the state. This ambition of boyhood days was realized by the man, in spite of many adverse circumstances.

In 1896 Mr. Major was elected senator from the eleventh Missouri district without opposition. He was a member of the revision commission in 1899, and edited and compiled the Revised Statutes of Missouri for that year. He was nominated for attorney general of Missouri on the Democratic ticket at the state primary, August 4th, 1908, and was elected at the following general election.

Mr. Major has now been engaged in the general practice of law for twenty-four years. He is handling in the Supreme Court of the United States cases involving the constitutionality of the two-cent passenger fare and maximum freight rate laws; also the cases of the State of Missouri v. Standard Oil Company, and State of Missouri v. Republic Oil Company, growing out of alleged violations of the anti-trust laws of Missouri, as well as actions against the Equitable Life Assurance Society of the United States, and the Metropolitan Life Insurance Company, and the Prudential

Life Insurance Company, wherein the licenses of such companies to do business in Missouri have been forfeited. He is also conducting cases against the Harvester Trust, the Lumber Trust, and Meat Trust on information in the nature of a quo warranto in the supreme court of the state. Attorney General Major is an able, popular and industrious officer, and is making a splendid record in the important position to which he has been called.

Unable to continue his work on the bench because of illness, President Judge William N. Ashman, of the orphans' court, Philadelphia, has made application to Governor Stuart for retirement because of physical disability. The announcement of Judge Ashman's retirement came as a surprise, although his friends knew that he had been contemplating such action for some time. He was reluctant to abandon duties which had claimed his earnest attention for thirty-two years, but, finding that his sight grew worse, rather than better, he finally determined to stand aside, so that a younger man could take up the work. Governor Hartranft appointed him an associate judge of the Orphans' court, January 11, 1878, to fill the vacancy caused by the resignation of Judge Dwight. In November, 1878, he was elected to fill the office for a term of ten years, beginning January 1, 1879, and at the expiration of each succeeding term he has been re-elected.

James Pendleton Helm, one of the most noted lawyers in Kentucky, died on March 29th, at the age of sixty years. He was the second son of Governor John L. Helm and Mary Hardin Helm. His grandfather on his mother's side was a United States Senator, and at one time secretary of state of Kentucky.

Edgar Luyster Fursman, ex-judge of the supreme court of New York, died at his residence in Troy, New York, on April 2d, from apoplexy. He was born at Charlton, New York, on August 5, 1838, and was educated at Greenwich Academy and at Fort Edward Collegiate Institute. He studied law, and was admitted to practice in July, 1854, at Schuylerville, New York, where he remained until May, 1867, when he removed to Troy. He formed a copartnership with Judge James Forsyth, and three years later became a member of the law firm of Smith, Fursman, & Cowen. He was elected county judge of Rensselaer county in November, 1882, and was re-elected in 1888. In 1889 he was elected to the supreme court bench, serving until October 10, 1902, when he resigned. Although he did not relinquish his legal work he was seldom seen in court after that date. His knowledge of criminal practice was especially extensive.

Fifty years a lawyer will be the enviable record of Judge U. L. Marvin of Akron, Ohio, on May 2d next. Judge Marvin is also a veteran on the bench, having been a judge of the circuit court for twenty-two years. He is a veteran of the Civil War, and has a right to be called major, although he would hardly realize that he was the party meant, if so addressed.

Hugh J. Caldwell, for fifteen years judge of the circuit court, died recently at Cleveland, Ohio, at the age of seventy-five years. Judge Caldwell was born at Lawrencetown, Ohio, in 1835. He served during the Civil War as a member of the Christian Commission, the forerunner of the Red Cross Society. After the War he began the practice of law in Cleveland, and was appointed to the bench in 1874. He retired six years ago.

As we go to press, news is received that Governor Charles E. Hughes, of New York, has been appointed to the Supreme Court bench and his nomination is now before the Senate, which is expected to speedily confirm it. A portrait and sketch of Governor Hughes will appear in the June number of Case and Comment.

The Humorous Side

If a laughable story comes your way, send it to Case and Comment, and we will pass the laugh along.

Cash and Credit.—"Father, what is meant by bankruptcy?"

"Bankruptcy is when you put your money in your hip pocket, and let your creditors take your coat."—Fliegende Blaetter.

An Unbiased Court.—A former county judge in Wisconsin, who lived several miles from the county seat, was accustomed to go to town every morning to attend to his judicial duties, and to return on the afternoon train. Once a case was being argued before him, and, as the afternoon began to wear away without the attorneys showing any signs of completing their argument, he began to fidget, and finally said: "Gentlemen, I have to catch the afternoon train, but don't let that disturb you. Go right on with your argument, and when you are through you will find my written decision in the upper lefthand drawer of my desk."

He Left it With the Jury.—Once when Baron Bramwell was sitting on the Crown side of the South Wales circuit, counsel for the defense in a certain case asked leave to address the jury in Welsh. The desire being a simple one, permission was given without demur. He said but very few words. The baron also did not think much comment was necessary, but was somewhat startled by the prompt verdict of acquittal.

"What was it?" he afterward inquired, "that Mr. L. said to the jury?"

"Oh, he just said: 'This case, gentlemen, lies in a nutshell. You see yourselves exactly how it stands. The judge is an Englishman, the complainant is an Englishman, but you are Welsh, and I am Welsh, and the prisoner is Welsh. Need I say more? I leave it all to you.' "—Law Notes.

How a Juror Was Lost.—In a southern county of Missouri years ago, when the form of questioning was slightly different than now, much trouble was experienced in getting a jury in a murder trial. Finally an old fellow answered every question satisfactorily; he had no prejudices, was not opposed to capital punishment and was generally a valuable find. Then the prosecutor said solemnly:

"Juror, look upon the prisoner; prisoner, look upon the juror."

The old man adjusted his spectacles and peered at the prisoner for a full half minute. Then turning to the court he said:

"Judge, durn if I don't believe he's guilty."—Kansas City Star.

Needed His Notes.—Years ago there lived in Louisville a lawyer who was of the rough-and-tumble kind, possessing more native wit than legal lore. He made a practice of practising law on the spur of the moment, and went into the court room time and again without having prepared his cases. He is gone now, and so is the judge who vented a degree of judicial wrath upon him, so the story can't hit anybody. This learned judge had listened as patiently as possible to an hour or more of trite platitudes and references to the laws of this glorious free country, but, seeing no real meat in any of the discussion, he checked the barrister at length by saying:

"Mr. X——, you cannot practise law by ear in this court."—Louisville Times.

Preferred Absent Treatment.— Judge — "Now, my man, I'm giving you six years in the penitentiary. It'll be for your own good. You'll have a chance to learn a good trade."

Burglar—"Couldn't you fix it so that I could learn the trade by correspondence?"

A Defeated Conscience.—George W. Martin, secretary of the Kansas State Historical Society, tells a story about an early-day Kansas justice of the peace, who will be nameless here:

"This J. P.," said Mr. Martin, "would marry a couple one day as justice of the peace, and divorce them next day as notary public."

One time, as the story ran, a man surrendered himself to this J. P.

"An' phwat's the matter?" asked the judge.

"I killed a man out here on the prairie in a fight," was the reply. "I want to give myself up."

"You did kill him, sor?" asked the J. P.

"Yes, sir," was the reply.

"Who saw you?" asked the J. P.

"Nobody."

"An' nobody saw you kill him?"

"No, sir; just we two were there."

"An' you're shure nobody saw you?" reiterated the J. P.

"Of course I'm sure," was the reply.

"Then you're discharged," said the J. P., bringing his fist down on the table. "You're discharged. You can't 'criminate yourself. Fifty dollars, please!"—Kansas City Journal.

A Comparison.—During a trial in an Ohio court a witness was, in the course of cross-examination, being badgered in the usual fashion by counsel.

"You made use of the word 'impossibility' just now," said the counsel. "Now, what is your understanding of the meaning of that word? Give us a concrete example."

The witness, who had seemed fascinated by certain features of the lawyer's physiognomy, smiled and said:

"I thank you, sir, for the privilege. By way of explaining my understanding of the meaning of the word in question, I may state that it would be an impossibility to make your mouth any bigger without setting your ears further back."

The Logical Conclusion.—Magistrate—"You say the prisoner turned round and stealthily whistled. What followed?"

Intelligent Witness—"Please, your Worship, his dog."—The Sketch.

No Appeal.—A haughty citizen once strolled into the Supreme Court, at Washington, when an argument was being heard, and took a seat in the inclosure reserved for lawyers. After he had been there a few minutes an attendant came over and asked him: "Are you a member of the bar?"

The haughty person wasn't; but he took out his card with a flourish and handed it over.

The attendant received the card gravely, carried it to the clerk, who glanced at it and gave some instructions.

A moment later the haughty citizen was touched on the shoulder and asked to retire.

"Why?" he asked. "I sent up my card. It usually gives me a seat in any court in the land."

"Certainly," said the attendant; "but please retire."

The haughty citizen did retire. When he got out in the corridor he fumed and fussed a bit.

"Sir," admonished the aged negro at the door, who has been there for many years, "think it over. Don't do no persiflagin' 'bout that Co't. If you should git in contempt of them you ain't got nobody to appeal to but God."

A New Charge.—A young lawyer in a Southern town was appointed by the court to defend a negro culprit who was too poor to employ counsel. The darkey, on being interviewed at the jail by the attorney, insisted sullenly that he had not done anything deserving arrest.

"Oh, you know you've been up to some meanness, Sam. Speak out now and let's have the facts," urged the lawyer.

"Boss," said the prisoner, "I tell yer I ain't done nuthin.' They just put me in here for fragrancy."—Harper's Monthly.

A Picturesque Offender.—Magistrate—"Officer, what is this man charged with?"

Constable—"He's a camera fiend of the worst kind, yer worship."

Magistrate—"But this man shouldn't have been arrested simply because he has a mania for taking pictures."

Constable—"It isn't that, yer worship; he takes the cameras."—Boston Globe.